

Schena, Cristeen

From: Flores, Priscilla (Feliciano)
Sent: Wednesday, October 01, 2014 11:12 AM
To: Jacobs, Kira
Cc: McClelland, Maureen;Downing, Jane;Dierker, Carl;Burt, Sally
Subject: Controlled Correspondence
Attachments: APNS Letter to EPA re SSA 10 1 14.pdf

Hello,

This is a Control Correspondence assigned to OEP.

Due date is Oct 15.

My CMS system is down and as soon as it starts working I will bring a pink folder over to you.

Please let me know if you have any questions.

Thanks,

Priscilla



October 1, 2014

Mr. Curt Spalding,
Regional Administrator
U.S. Environmental Protection Agency- Region 1
5 Post Office Square – Suite 100
Boston, MA 02109-3912

Re: Cape Wind Associates, LLC - Safe Drinking Water Act Compliance

Dear Administrator Spalding:

I am writing on behalf of the Alliance to Protect Nantucket Sound (“Alliance”) to address a critical environmental issue with respect to the proposed Cape Wind Associates, project in Nantucket Sound and onshore in Cape Cod (the “Project”). Specifically, the EPA has not evaluated the onshore portion of the Project under the Safe Drinking Water Act’s Sole Source Aquifer (“SSA”) program as required by the SSA Protection Program.

As you may know, a portion of the Project would be located at the Barnstable Switching Station. The Barnstable Switching Station, along with all of Cape Cod, sits atop the Cape Cod SSA. The Cape Cod SSA is a single continuous aquifer which currently serves as the only source of drinking water for the hundreds of thousands of permanent and seasonal residents of Cape Cod. The Cape Cod SSA:

is glacial in origin and is composed of unconsolidated sand, gravel, silt and clay deposits. As a result of its highly permeable soil characteristics, the Cape Cod aquifer is susceptible to contamination through its recharge zone from a number of sources, including but not limited to, chemical spills, highway runoff, septic tanks, leaking storage tanks, and leaching from open dumps ... Since ground water contamination can be difficult or impossible to reverse, and since this aquifer is relied on for drinking water purposes by the general population, contamination of the aquifer would pose a significant hazard to public health.

See U.S. EPA, Cape Cod Aquifer Determination, 47 Fed Reg. 30282 (July 13, 1982) (emphasis added). Given the significance of the Cape Cod SSA to the entire population of the Cape, and its susceptibility to contamination, it is critical to protect this important resource. Even Cape Wind acknowledges the great importance of the integrity and full protection of the Cape Cod SSA, stating on its own website that “[w]aste management from all sources is an important issue on Cape Cod because it has a sole source aquifer for drinking water.” See <http://www.capewind.org/where/history#CLIMATE>.

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www.saveoursound.org

a 501 (c)(3) tax-exempt organization

Under the currently proposed configuration of the Project, to accommodate the Project's interconnection, the following equipment would be located at the Barnstable Switching Station:

Four shunt reactors, two harmonic filters, an expansion of NSTAR [Electric Company]'s existing static VAC compensator ("SVC"), a control house and eight bays for breakers.

See August 8, 2014 Letter from David Rosenzweig to Kathryn Sedor, Energy Facilities Siting Board (EFSB.)¹ Cape Wind's recent revision to its proposed plan at the Barnstable Switching Station includes oil-filled equipment on the SSA. According to Cape Wind's discovery responses in the current EFSB-21 proceedings, 1534 gallons of oil would be stored on the site, including a total of 972 gallons of dielectric fluid (216 units of 4.5 gallons each) and 562 gallons of impregnating fluid (72 units of 7.8 gallons each.)

Because this oil-filled equipment is proposed to be constructed over the Cape Cod SSA, EPA is required to evaluate the Project under the SSA Protection Program, as authorized by Section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300 *et. seq*, which states:

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.²

42 U.S.C. 300h-3(e) (emphasis added). Because Cape Wind has sought a commitment for federal financial assistance, EPA must review the Project under the SSA Protection Program. To the knowledge of the Alliance, no such review has occurred with respect to the proposed configuration of equipment at the Barnstable Switching Station. Indeed, the Department of Energy currently is in violation of the SDWA having already made the decision on the "conditional loan guarantee" in advance of this important review. Given the importance of the SSA for the Cape's drinking water supply it is urgent for EPA to undertake this review and to impose any necessary and appropriate groundwater protection conditions.

¹ On August 8, 2014, the Applicant notified the Energy Facilities Siting Board of a critical change to the Project. Previously, the Applicant planned for two shunt reactors to be located on the Electrical Service Platform in Nantucket Sound, and two additional shunt reactors to be located at the Barnstable Switching Station. Now, the Applicant plans for all four shunt reactors to be located at the Barnstable Switching Station.

² EPA defines a sole or principal source aquifer as one which supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. EPA guidelines also stipulate that these areas can have no alternative drinking water source(s) which could physically, legally, and economically supply all those who depend upon the aquifer for drinking water.

The EPA is legally obligated to review the Project under the SSA Protection Program and to impose any necessary and appropriate conditions or restrictions on the Project, before the DOE can actually commit federal funds to the Project. Without such review, the Project cannot proceed further.

Very truly yours,



Audra Parker
President and CEO

Cc: The Honorable Sally Jewell, Secretary of U.S. Department the Interior
Kira Jacobs, U.S. Environmental Protection Agency (Region 1 SSA program in
Massachusetts)
Dr. Walter Cruickshank, Acting Director of Bureau of Ocean Energy Management
Dr. Ernest Moniz, Secretary of U. S. Department of Energy
David Frantz, Deputy Director, Loan Programs Office, U.S. Department of Energy
Maeve Vallely Bartlett, Secretary, Executive Office of Energy and Environmental
Affairs

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Schena, Cristeen

From: Grantham, Nancy on behalf of Spalding, Curt
Sent: Wednesday, October 01, 2014 10:15 AM
To: Flores, Priscilla (Feliciano)
Subject: FW: Alliance letter to EPA re Cape Wind project revisions and Cape Cod's SSA
Attachments: APNS Letter to EPA re SSA 10 1 14.pdf

[Control to oep and copy orc ..thanks ng](#)

From: Sandy Taylor [mailto:sandyt@saveoursound.org]
Sent: Wednesday, October 01, 2014 10:03 AM
To: Spalding, Curt
Cc: feedback@ios.doi.gov; 'David Frantz'; Jacobs, Kira; maeve.vallelybartlett@state.ma.us; walter.cruickshank@boem.gov
Subject: Alliance letter to EPA re Cape Wind project revisions and Cape Cod's SSA

Please review the attached Alliance to Protect Nantucket Sound letter to the Administrator of the EPA.
A hard copy will follow in today's mail.

Sandy Taylor
Executive Assistant
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Hyannis, MA 02601
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www.saveoursound.org

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From: Sandy Taylor <sandyt@saveoursound.org>
Sent: Wednesday, October 01, 2014 10:03 AM
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Schena, Cristeen

From: Catri, Cindy
Sent: Tuesday, September 30, 2014 5:46 PM
To: Bill White
Cc: Chet Myers; Jay Borkland; Christopher Morris; Dierker, Carl; Owens, James T.; Lombardo, Ginny; Williams, Ann; Tisa, Kimberly; Marsh, Michael; Colarusso, Phil; LeClair, Jacqueline; O'Neil, Kelsey
Subject: Third Modification to South Terminal Project
Attachments: Third Modification of South Terminal Project SDMS # 565833 1 of 2.pdf

Bill,

Attached (in two parts), please find the Third Modification to EPA's Final Determination for the South Terminal Project. A second email will transmit part two.

A copy of this Determination will be posted on EPA's New Bedford Harbor website and a CD-ROM will be sent to the New Bedford Public Library. A copy will also be available to the public through EPA's Superfund Records Center.

In addition, Kelsey O'Neil from our public affairs office is working with your office to provide a newspaper notice for publication and to have the document translated into Spanish and Portuguese.

Thank you for your quick responsiveness to our requests for information during the last two months; it was very much appreciated. Please call with any questions.

September 30, 2014

Third Modification to EPA's Final Determination for the South Terminal Project – Additional Dredging to Widen Channel and Associated Blasting for Rock Removal

THIRD MODIFICATION SUMMARY: After completing consultation with other federal and state agencies, as required by federal and state law, and after reviewing additional submissions by the Commonwealth of Massachusetts ("the Commonwealth"), EPA has determined that the Commonwealth's request for a Third Modification to EPA's Final Determination for the South Terminal Project, issued on November 19, 2012, as modified by the First Modification dated February 4, 2013, and the Second Modification dated September 30, 2013, (altogether referred to as "the Final Determination, as modified" or "FD, as modified") is both protective of human health and the environment, meets the substantive requirements of applicable or relevant and appropriate federal environmental standards and, through the Commonwealth's determination, meets applicable or relevant and appropriate state environmental standards, as long as the conditions set forth in this Third Modification are met. Through this Third Modification, EPA is modifying the South Terminal Project portion of the State Enhanced Remedy ("State Enhanced Remedy" or "SER"), which is incorporated into the 1998 Record of Decision for the Upper and Lower Harbor at the New Bedford Harbor Superfund Site ("1998 ROD") so that it includes additional dredging to reconfigure the 225 foot wide approach channel and the 100 foot wide tug channel to a 300 foot wide channel ("the navigational channel"), eliminating the tug channel and deepening the entire channel to a uniform depth of -30 to -32 MLLW, along with additional associated blasting for rock removal and additional mitigation. This Third Modification also clarifies upland remediation activities at the Radio Tower parcel, including its changed use from ancillary to heavy load use, and incorporates minor changes to the Project: In January 2014, EPA authorized substitution of the use of clean parent material dredged from another source in the Harbor as material for mitigation purposes, and this document continues that authorization as long as certain conditions are met; and in March 2014, EPA authorized one additional blasting event.

The Commonwealth, through the Department of Environmental Protection ("MassDEP"), and the Massachusetts Clean Energy Center ("MassCEC") for the South Terminal Project, will continue to be the lead for conducting the SER work and is responsible for securing all funding for the SER work. EPA and other federal, state and local entities will continue to act as supporting regulatory agencies for the SER work.

Portuguese and Spanish translations of this document are available at the New Bedford Public Library.



SDMS DocID

565833

The Administrative Record in support of this Third Modification to the Final Determination for the South Terminal Project will be available at the New Bedford Public Library, 613 Pleasant Street, 2nd Floor Reference Department, New Bedford, MA (508) 961-3067 and the EPA New England Records Center, 5 Post Office Square, 1st floor, Boston, MA (617) 918-1440 as well as online at www.epa.gov/nbh. The Administrative Records for EPA's Final Determination for the South Terminal Project, the Second Modification to EPA's Final Determination for the South Terminal Project, and for the New Bedford Harbor Superfund Site are incorporated by reference into this Administrative Record and may be viewed at the same locations.

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I. Introduction

A. The Third Modification At A Glance...

This is the Third Modification to the Final Determination for the South Terminal Project for the New Bedford Harbor State Enhanced Remedy (“the Third Modification”) that EPA issued on November 19, 2012. The Final Determination included the South Terminal Project as part of the State Enhanced Remedy that was approved and integrated into the 1998 ROD, issued on September 25, 1998. This document, and its supporting Appendices and Administrative Record, provides the rationale for EPA’s determination that additional dredging to reconfigure the navigational channel, associated blasting for rock removal,¹ elimination of the tug channel, and additional mitigation slightly increases the scope and detail of the South Terminal Project as approved in EPA’s Final Determination, as modified, but does not fundamentally change the approved SER. It is consistent with the regulations at 40 C.F.R. § 300.515(f)(1)(ii) (State enhancement of remedy) and with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9601 et. seq.²

With this document, EPA determines that the South Terminal Project described in the Final Determination, as modified by the First and Second Modifications, and by the work described in this Third Modification, which consists of additional dredging to reconfigure the navigational channel (which expands the width of the navigational channel 25’ to the west and 75’ to the east for a total of 300’ wide, with a uniform depth of – 30 to -32 feet MLLW), additional blasting for rock removal associated with the widening and deepening activities, elimination of the 100’ wide tug channel, and additional mitigation, along with a clarification and some minor changes, is both protective of human health and the environment and meets the substantive requirements of applicable or relevant and appropriate federal environmental standards. EPA also accepts the Commonwealth’s determination that the Project, as modified, meets the applicable or relevant and appropriate state environmental standards. The Project, as modified, does

¹ As explained below in section III.C, EPA approved the associated blasting with conditions on August 20, 2014, based on the lack of environmental or community impacts from prior blasting events and the smaller magnitude of this blasting compared to that which occurred in the winter of 2012-2013.

² While EPA does not believe that an Explanation of Significant Differences (“ESD”) under CERCLA is required here, this Third Modification to the Final Determination meets the requirements for an ESD as EPA has complied with CERCLA §117(c) and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (“NCP”) §§300.435(c)(2)(i) and 300.825(a)(2). In addition, as with an ESD, this Third Modification to the Final Determination describes to the public the nature of the changes, summarizes the information that led to making the changes, and affirms that the revised action complies with the NCP and the statutory requirements of CERCLA.

not conflict with and is not inconsistent with the New Bedford Harbor Superfund remediation, and EPA reaffirms that the 1998 ROD, including the SER, remains protective of human health and the environment. EPA makes this determination after carefully reviewing the submissions provided by the Commonwealth and after completing its consultation requirements with other federal and state agencies. This Third Modification is subject to the conditions set out below in section II of this document and those contained in the Final Determination, as modified. Accordingly, the South Terminal Project, as modified, will continue to benefit from the CERCLA Section 121(e) permit exclusion.

This document also clarifies the upland remediation activities for the Radio Tower parcel, including its changed use from ancillary to heavy load use, reflects a minor change to the mitigation work, and describes one additional blasting event which occurred in March 2014. This Third Modification incorporates those changes. The First Modification, issued by EPA on February 4, 2013, corrected an inconsistency between section II.2 of the Water Quality Performance Standards (Appendix C of the Final Determination) and section 20.0 H.2 of the Final Determination of Compliance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 (Appendix E of the Final Determination) with regard to employment of an environmental monitor for the Project. The Second Modification increased the width of the navigational channel by 50 feet (for a total of 225 feet) and the length of the deep draft berthing area by 200 feet (for a total of 800 feet). It also included reconfiguration of CAD Cell 3 and authorized the use of blasting in certain subtidal areas for rock removal, as well as a change to the PCB cleanup standard for the upland remediation (from less than or equal to (" \leq ") 25 parts per million ("ppm") to less than (" $<$ ") 50 ppm PCB concentrations in soil). Certain mitigation measures were revised and clarified as were certain traffic routes.

For more information about CERCLA and NCP provisions regarding the SER and its incorporation into the 1998 ROD, see discussion beginning at page 4 of EPA's Final Determination for the South Terminal Project.

B. Community Impacts

Similar to the additional channel dredging work authorized in the Second Modification, because neither the disposal of the dredged sediment or the construction schedule are changing, no additional impacts to the community are anticipated from this additional dredging work. Increased vessel traffic will likely occur as a result of having to dredge and dispose of up to approximately 105,000 additional cubic yards of dredged sediment. All measures referenced in EPA's Final Determination to reduce impacts to the community from the South Terminal work remain in place. (See page 13 of the Final Determination; also see the Commonwealth's Construction Management Plan which

provides a detailed discussion of, among other things, management of traffic, noise, and dust.³⁾

Upland remediation of PCB-contaminated soil on the Radio Tower parcel will require the use of heavy equipment, may create increased truck traffic and potential air emissions from dust for a short period of time. Air monitoring will be conducted during these remedial activities and other site preparation work. Should levels exceed the action levels set forth in the South Terminal Air Monitoring Plan (Appendix A of the Final Determination), EPA will be notified and corrective action will be taken if necessary. Decontamination measures will prevent tracking of soil offsite, the Radio Tower parcel will be capped with Dense Graded Aggregate material, and land use will be restricted. In addition, the work will comply with all conditions contained in the Second Modification to the November 19, 2012 Toxic Substances Control Act ("TSCA") § 761.61(c) Determination for New Bedford South Terminal Marine Facility ("Second Modified TSCA Determination") (Appendix E of this document) and with the Massachusetts hazardous waste cleanup program (M.G.L. c. 21E).

For a number of reasons explained below in section III.C, including the smaller magnitude of the event in duration, charge weight and compliance with all community protection measures previously used, EPA authorized blasting with conditions on August 20, 2014. Based on the post-blasting report provided to date by the Commonwealth, all community and water-based precautions were implemented and vibrations recorded during blasting were well below the limits for residential and historical structures.⁴

C. Resource Impacts

The Project modifications will impact waters of the U.S. and aquatic life; however, EPA has determined that the additional impacts that would result from the Project modifications do not change EPA's determination that the Project, subject to the conditions in the Final Determination, as modified, and in this Third Modification, complies with the Clean Water Act ("CWA") § 404(b)(1) guidelines ("CWA guidelines"), or that the South Terminal site represents the Least Environmentally Damaging Practical Alternative ("LEDPA"), since other alternatives are either not practicable or not less environmentally damaging; nor do they change EPA's conclusions regarding the Project's compliance with the other elements of the CWA guidelines. See Section VI.B.1. (CWA) for further discussion. Similarly, EPA has concluded that the Project modifications would not result in significant adverse effects on Essential Fish Habitat

³ The Construction Management Plan is found in the Administrative Record for the Second Modification at AR# 547287.

⁴ See Weekly Blast Report #1 for week 8-31-14 through 9-06-14, attachment to the Commonwealth's September 25 - 26, 2014 submission.

("EFH") or resources protected by the Fish and Wildlife Coordination Act ("FWCA"). See Section VI.B.4. (EFH/FWCA) below for further discussion.

The Atlantic sturgeon, an endangered species potentially present in the area, is not likely to be adversely affected by the modified Project provided that the specified mitigative measures to minimize the potential for entrainment and turbidity, and to minimize acoustical (pressure and impulse) impacts and maintain a zone of passage, are employed.⁵ See section VI.B.3 (Endangered Species Act "ESA") below for further discussion.

EPA has also concluded that the Project, as modified, will not affect the Palmer Island Light Station, a historic structure or the paleosol previously identified in the Final Determination. See Section VI.B.5 (National Historic Preservation Act "NHPA") below for further discussion.

Substituting the source of clean sand for use in mitigation measures at the OU3 pilot cap area, using clean sand generated from the additional channel widening dredging at the winter flounder mitigation area, and the use of appropriate clean parent material from any source in the Harbor will have no significant impact on aquatic resources or water quality provided the Commonwealth meets all the conditions in this Third Modification including continued compliance with the Final Mitigation Plan⁶ requirements for maintenance, performance standards and monitoring.

Similarly, allowing PCB-contaminated sediment and soils with concentrations <50 ppm to remain on the Radio Tower parcel and capping activities will have little impact on resources as long as the conditions set out in the Second Modified TSCA Determination (Appendix E) are met and the cleanup is conducted in accordance with M.G.L. c. 21E.

D. Public Comment

No public comment is required by CERCLA and its implementing regulations (see 40 CFR §300.435(c)(2)), and EPA has decided that a discretionary additional public comment period was not needed with respect to the Third Modification for several reasons, including:

- (1) the Draft Determination along with its supporting Administrative Record, which was issued for public comment, included some discussion of the additional dredging and blasting that occurred in the winter of 2012-2013 as well as an evaluation of certain potential impacts and associated mitigation measures; the additional dredging and blasting and associated mitigation

⁵ In EPA's ESA consultation with the U.S. Fish and Wildlife Service as part of the Final Determination, which included consideration of blasting and the expanded dredging, EPA concluded that these activities were not likely to adversely affect the roseate tern, also an endangered species potentially present in the area.

⁶ The Final Mitigation Plan can be found in the Final Determination Administrative Record at AR # 523889.

measures described in this Third Modification will be conducted within or adjacent to areas already authorized to be included in the Draft and Final Determination for the Project⁷;

- (2) the additional dredging and blasting are located within areas already authorized for dredging and blasting through the EPA's November 2012 Determination and the 2013 Second Modification;
- (3) the construction schedule for completing the South Terminal facility remains the same;
- (4) prior dredging work involving greater volumes, and blasting events in the winter of 2012-2013 of a greater magnitude in terms of duration, charge size, and thickness of rock, did not result in significant impacts to the community or land based structures or result in significant fish mortality; as such, EPA did not anticipate new or significant additional impacts to the surrounding community, land-based structures or significant fish mortality from this work;
- (5) the proponent held public meetings to describe its request to EPA for this additional work⁸; and
- (6) other consulting agencies were advised of the additional work and did not raise concerns.

E. Public Record

Since the issuance of the Final Determination, the Commonwealth has requested three modifications to the South Terminal Project. The First Modification, issued by EPA on February 4, 2013, corrected an inconsistency in the Final Determination between section II.2 of the Water Quality Performance Standards (Appendix C of the Final Determination) and section 20.0 H.2 of the Final Determination of Compliance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 (Appendix E of the Final Determination) with regard to employment of an environmental monitor for the Project. That Modification is posted on EPA's New Bedford Harbor website at www.epa.gov/nbh and was incorporated into the Administrative Record for the Second Modification.

The Second Modification issued by EPA on September 30, 2013, increased the width of the navigational channel by 50 feet (for a total of 225 feet) and the length of the deep draft berthing area by 200 feet (for a total of 800 feet). It also included reconfiguration of CAD Cell 3 and authorized the use of blasting in certain subtidal areas for rock removal as well as a change to offsite disposal requirements for upland remediation of the main facility parcels (from greater than (" $>$ ") 25 ppm to greater than or equal to (" \geq ") 50 ppm PCB concentrations in soil). Certain mitigation measures were revised and

⁷The Final Determination did not evaluate impacts from blasting on the New Bedford/Fairhaven Hurricane Barrier, the Palmer Island Light Station, or the Atlantic sturgeon or other aquatic species; those impacts were evaluated in the Second Modification.

⁸ See the presentation slides from public meetings held by the Commonwealth on August 5 and September 2, 2014, at Attachment E of the Commonwealth's September 12, 2014 submission.

clarified as were certain traffic routes. The Second Modification, along with its Administrative Record, is also posted on EPA's New Bedford Harbor website at www.epa.gov/nbh and is available at the EPA Records Center and the New Bedford Public Library.

Documents submitted in support of the Commonwealth's request for this Third Modification as well as all documents EPA relied on are included in the Administrative Record for this Third Modification and can be found at www.epa.gov/nbh and at the EPA Records Center and the New Bedford Public Library. The Administrative Record for EPA's Final Determination for the South Terminal Project, the Administrative Record for the Second Modification, and the Administrative Records for the New Bedford Harbor Superfund Site are incorporated by reference into the Administrative Record for the Third Modification to EPA's Final Determination for the South Terminal Project.

F. Summary of Third Modification

- Expands the width of the navigational channel to the terminal from 225 feet to 300 feet, an expansion of 25 feet on the western edge of the channel and 50 feet on the eastern edge;
- Creates a uniform channel of -30 to -32 feet MLLW in the navigational channel;
- Eliminates the 100 foot wide, -14 MLLW tug channel;
- Incorporates the use of blasting for rock removal, which EPA authorized on August 20, 2014 and which began on September 3, 2014, within the previously designated navigational channel and tug channel subtidal areas;
- Creates 4.6 additional acres of winter flounder habitat at the winter flounder mitigation area;
- Clarifies upland remediation at the Radio Tower parcel to include offsite disposal of material containing PCB-concentrations greater than or equal to (" \geq ") 50 ppm, capping and a change from ancillary to heavy load use; and
- Incorporates two minor changes:
 - In January, 2014, EPA authorized substitution of the use of clean parent material dredged from another source in the Harbor as material for mitigation purposes, and this document continues that authorization provided certain conditions are met; and
 - In March EPA authorized one additional blasting event.

The expanded dredging work will result in dredging of approximately 4.2 acres of previously undredged areas and 2.3 acres of areas already permitted for dredging to -14 MLLW for a total of 6.5 acres of additional dredging, generating approximately 105,000 additional cubic yards of dredged sediment. Of that amount, approximately 30,000 cubic yards is contaminated with PCB concentrations within a range of 1 to 50 ppm and will be disposed in CAD cell 3; the remaining approximately 75,000 cubic yards of clean parent material may be used as part of the expanded mitigation efforts at the winter flounder mitigation area or may be disposed of offshore under existing permits.

Blasting in September 2014 reduced approximately 3,000 cubic yards of subtidal rock to a smaller size; it will be removed during dredging activities.

The dredging volume table originally attached as Table 1 to the Final Determination has been revised and is attached as Table 1 to this document. A map depicting the reconfiguration of the navigational channel and tug channel to a 300 foot wide channel is attached as Figure 1 to this document. A map of the subtidal blasting areas is attached as Figure 2. A map of the additional winter flounder mitigation area is attached as Figure 3.

II. EPA Approval and Conditions

A. Approval and Conditions for Third Modification

Subject to the conditions and understandings set out herein, after review and consideration of all the information submitted by the Commonwealth, and after completing required consultations with all federal and state agencies, EPA has determined that the South Terminal Project, as modified by this Third Modification, which consists of additional dredging to reconfigure the 225 foot wide navigational channel and the 100 foot wide tug channel to a 300 foot wide channel, eliminating the tug channel, deepening the entire channel to a uniform depth of -30 to -32 MLLW, and associated additional blasting for rock removal, along with the clarifications and minor changes, remains both protective and meets the substantive requirements of the applicable and relevant and appropriate federal environmental laws that would normally apply as part of a permitting process. In addition, EPA accepts the Commonwealth's determination that the Project, as modified by the Third Modification, meets the applicable and relevant and appropriate state environmental standards. The Project, as modified, does not conflict with and is not inconsistent with the remedy. EPA reaffirms that the 1998 ROD, including the State Enhanced Remedy, as modified, remains protective of human health and the environment.

As a result, EPA is approving inclusion of the Project, as modified by the Third Modification, into the State Enhanced Remedy at the New Bedford Harbor Superfund Site which is subject to the permit exclusion found in Section 121(e) of CERCLA provided that the Commonwealth meets the following conditions:

1. Maintain compliance with all applicable or relevant and appropriate requirements ("ARARs")⁹ and performance standards in the Final Determination as modified by the First, Second and this Third Modification, including the

⁹ For ease of understanding, throughout this Third Determination, federal ARARs are also sometimes referred to as "applicable or relevant and appropriate federal environmental standards" and state ARARs are also sometimes referred to as "applicable or relevant and appropriate state environmental standards."

Revised Water Quality Performance Standards (Appendix C of the Second Modification), and the conditions in the TSCA Determinations in the Final Determination (Attachments J1 and J2), the First Modified TSCA Determination (Appendix D of the Second Modification to the Final Determination) and the Second Modification to the TSCA Determination, attached to this document at Appendix E;

2. All conditions set out in Section VI.B.1. (Clean Water Act) below;
3. To protect the Atlantic sturgeon and other aquatic species, the conditions for dredging contained on page 2 of the April 18, 2013 consultation letter from EPA to the National Marine Fisheries Services ("NMFS")¹⁰ (Appendix B of the Second Modification);
4. The Revised Water Quality Performance Standards (See Appendix C of the Second Modification, Section II.5.b);
5. Clean material used for mitigation measures from any source in the Harbor must be appropriate for the proposed use and meet all the objectives contained in the Final Mitigation Plan, and if from a source other than that authorized in the Final Determination, must have prior written approval from EPA, and, if necessary, a new permit or a modification to an existing permit for offshore disposal must be secured; and
6. Submission for EPA review and approval of any workplans required by the Final Determination that require revision as a result of this Third Modification and any workplans required by this Third Modification, including those required by the Second Modified TSCA Determination.

In addition to the above, after receiving assurance from the Commonwealth that there would be no dredging below previously approved depths, EPA imposed the following conditions on the additional blasting in its August 20, 2014, approval letter¹¹:

1. The additional blasting events remain as described in MassCEC's July 25 and August 14, 2014 submissions (with approximately 60 – 80 boreholes with delays, with a maximum total explosive charge of 136 lbs. per borehole) and includes a minimum 25 millisecond delay between charge detonations;
2. For compliance with TSCA, all contaminated material is removed and properly disposed in accordance with EPA's prior determinations for South Terminal;

¹⁰ The conditions for blasting in the April 18, 2013 letter were superseded by those set out in EPA's August 20, 2014 approval letter and Section VII.B.1(CWA) of the Second Modification.

¹¹ See section III.C of this document for more complete discussion.

3. Implement all mitigation and monitoring measures that are required prior to blasting events as described in EPA's Second Modification¹² to protect aquatic resources, including water quality monitoring, the fish deterrent system (including silt and bubble curtains), a fisheries observer on site, and monitoring for fish pre- and post-blasting except as modified below:
 - a. Condition No. 1: A final blasting plan must be submitted to and approved by EPA before blasting commences;
 - b. Condition No. 2: Blasting shall only be conducted in the locations depicted on Attachment B of the Commonwealth's August 14, 2014 letter to EPA (See Figure 2 of this document); the remainder of this condition is not applicable to the current blasting request;
 - c. Condition No. 7: The second paragraph of this condition is not applicable to the current blasting request;
 - d. Condition No. 8: No more than 136 pounds of explosive per delayed charge, with a minimum time delay of 25 milliseconds between charges shall be used; and
 - e. Condition No. 13: To protect the Hurricane Barrier, blasting must also be conducted consistent with the email dated August 15, 2014 from Michael Bachand , USACE to Chet Myers (see Attachment 6 of EPA's August 20, 2014 approval letter);
4. Implement all impact parameter and monitoring measures required for prior blasting events as described in EPA's Second Modification for impact on land structures and in water structures, including the historic Palmer Island Light Station and the Hurricane Barrier;
5. Implement all measures for public notice to landowners and mariners required for prior blasting events in accordance with EPA's Second Modification; and
6. MassCEC provides EPA with a post-blasting report similar to the weekly blasting reports provided from prior blasting events.

All deliverables required for EPA review and approval shall be submitted to Ginny Lombardo with copy to Cynthia Catri as directed in Section 20 of Appendix E of the Final Determination.

¹² See Section VII.B.1.2.e of the Second Modification.

III. Background and Description of Work

For a description of the State Enhanced Remedy (SER) process and the inclusion of navigational dredging and disposal as an enhancement in the 1998 ROD, see the 1998 ROD and the Final Determination.

Below is specific background information relative to the Commonwealth's third request to modify the Final Determination, as modified, to incorporate additional dredging work for the channel reconfiguration and associated blasting for rock removal. Information clarifying upland remediation work on the Radio Tower parcel and its changed use, and concerning minor changes relating to mitigation activities and the March 2014 blasting event are also provided in this section

A. Additional Dredging - Background

Based on safety concerns raised by maritime experts about the 225 foot wide navigational channel, the Commonwealth, on July 25, 2014, requested EPA approval of additional dredging to expand the width of the navigational channel to 300 feet and depth to a uniform -30 to -32 feet MLLW, elimination of the authorized tug channel, and approval to conduct blasting associated with these activities.

During design and construction of the South Terminal Project, the Commonwealth engaged a variety of maritime experts and professionals, including the U.S. Coast Guard and the Northeast Marine Pilots Association ("the Pilots"), in discussions about the design of a safe navigational channel for the terminal facility for its intended use to support the offshore wind industry and anticipated future cargo vessels.¹³ The Commonwealth states that the originally authorized 175 foot channel at -30 to -32 MLLW and 100 foot tug channel at -14 MLLW, was designed with input from the Pilots, tug operators and other maritime professionals and in accordance with U.S. standards for navigational channel design using the dimensions of a representative vessel (BBC Mississippi) that was 469 feet long and 75 feet wide, which was adequate to transport the type of wind industry components and cargo anticipated at the terminal. While the Pilots preferred as wide a channel as possible due to concerns about crabbing, the difficulty discerning between the deep draft channel area and shallower tug channel, and about buoy placement, a safe, commercial channel that minimized impacts on the environment was determined to be the 175 foot channel and 100 foot tug channel. See EPA's November 2012 Final Determination for the South Terminal Project for further discussion.

¹³ Massachusetts state law requires pilots to guide ships of certain size and with certain cargo, among other things, into areas of special interest within the waters of the Commonwealth. See M.G.L Chapter 103, Section 21; see also discussion on pages 3-4 of the Commonwealth's July 25, 2014 submission. In addition, the U.S. Coast Guard can impose safety measures on vessels if it determines they are necessary. See letter dated September 22, 2014, from Edward LeBlanc, U.S.C.G., attached to the Commonwealth's September 25 - 26, 2014 submission.

Subsequently, the Commonwealth acquired information about future vessels representative of both the offshore renewable energy industry (international and installation vessels) and anticipated future cargo vessels, which were larger and required deeper draft. Expressing its desire to accommodate such vessels and with adequate funding accessible, the Commonwealth again consulted with the Pilots and other maritime experts on the channel design, with the Pilots continuing to raise the same safety concerns with maneuvering such vessels in the channel.

As a result, the Commonwealth requested EPA approval to expand the deep draft dredging area an additional 200 feet to the north of the approved 600 foot area (at -30 to -32 MLLW) and to widen the channel an additional 50 feet to the west for a total channel width of 225 feet.

As explained in its March 2013 submission, a wider channel at deeper depths allows vessels to safely pass with a buffer on either side to accommodate drift caused by currents, wind forces, or navigational error or navigational drift and to avoid running aground when such forces could drive them off of the center of the channel. Similarly, a longer deep draft berthing area would be necessary to safely accommodate such vessels. On September 30, 2013, EPA approved the channel expansion to 225 feet wide. See EPA's Second Modification to the South Terminal Project.

In its July 25, 2014, submission in support of its request to expand the channel to a total width of 300 feet wide, the Commonwealth presented two significant developments that occurred during the last year. First, the Commonwealth stated it received confirmation in the winter of 2014 that a specific vessel, the Hansa Heavy-Lift P-2 Series (553 feet long and 83 feet wide), would be transporting monopoles and other foundational components of the wind turbines to the terminal. Second, the Commonwealth, in cooperation with the Pilots, commissioned the Maritime Simulation Institute ("MSI") to create a simulation model for the new terminal on which the Pilots conducted practice sessions to evaluate the methods for berthing and transiting vessels to the terminal. A variety of modelling scenarios were run in January, May, and August, 2014, the results of which are presented in the Commonwealth's July 25, 2014, and September 12, 2014 submissions. Essentially, the modelling confirmed the Pilot's safety concerns.

The January 2014 modelling effort simulated runs in a 225 wide channel with the 100 foot tug channel based on the representative BBC Mississippi vessel¹⁴ with 15 knot winds using both local 1000 horsepower, single screw tugs and using 3,000 horsepower twin screw tugs (which need deeper draft than 14 feet). Because the cranes are located on the left side of the vessel, the vessel was simulated entering the navigational channel

¹⁴ While unclear, it appears that the Commonwealth, at the time of the January 2014 modelling, had not yet received confirmation that the Hansa-Heavy Lift vessel would be used.

stern first to the terminal. The Pilots concluded the 225 foot channel with either tug did not provide an adequate margin of safety due to wind effects on the ship as it navigated the channel. The Pilots, upon review, asked that a southern turning basin be included in the channel design and that a navigational channel design expert review the existing design. Other maritime experts present during the modelling opined that 5,000 horsepower tractor tugs were needed. Tractor tugs have Z-drives which allow the tug to exert full force in any direction regardless of the tug position, an asset for maneuvering, and require 20-25 feet of draft.

The May 2014 modelling effort was recalculated to simulate the Hansa-Heavy Lift vessel within a 225 foot wide channel and a 300 foot channel using tractor tugs with 18 knot winds, both bow and stern first. The tugs used bow and stern lines to reduce the amount of lateral space needed within the channel. The consensus of the maritime professionals gathered in May, after reviewing the modelling results, was that a 225 foot wide channel did not provide a sufficient factor of safety for navigation but that a 300 foot channel would likely be sufficient.¹⁵ The Commonwealth included an email from Edward LeBlanc, Chief of the Waterways Management Division of the U.S. Coast Guard, in which he opined that, "I think we can all agree that "wider/deeper" equals better, in terms of safety and flexibility, but my sense from the MSI simulations that I observed is that a 300-foot wide channel at 30-foot depth, together with the application of appropriate mitigations such as tractor tugs, certain weather and tide parameters, and aids-to-navigation improvements, reduces navigation safety risk to an acceptable level." He recommended additional modelling with additional aids-to navigation built into the model by a more varied pool of pilots, captains, and tug operators under various conditions to confirm or disprove his opinion.¹⁶

A third modelling event occurred in August, 2014. The Commonwealth provided the modelling runs and a letter from Captain Bushy, Deputy Commissioner of Pilots - District 3, dated September 12, 2014, in which he states, "The modeling runs conducted at the Maritime Simulation Institute following the modifications made by MassCEC to the New Bedford Marine Commerce Terminal have indicated to me that the dimensions of the revised channel and new operation conditions are providing a safer passage of ships that are expected to call at the terminal in connection with the Cape Wind project." Captain Bushy goes on to state, "I can report that, with a high degree of confidence, that an adequate margin of safety exists in the proposed wider channel under the conditions referenced above and thereby recommend regulatory approval and construction of the widened channel to proceed."¹⁷ The Commonwealth also represented that Captain

¹⁵ The Commonwealth did not provide a date but EPA assumes this meeting was held after the May modelling events occurred. Present at the meeting were five representatives from the Northeast Pilots and a group of experts, including Masters from the Massachusetts Maritime Academy, U.S.C.G., Captain Bushy, representatives from Cape Wind and its subcontractors, including EEW, Siemens, and the Captain of Baltship's Hansa vessel.

¹⁶ See Attachment N of the Commonwealth's July 25, 2014 submission.

¹⁷ See Attachment B of the Commonwealth's September 12, 2014 submission.

Bushy, although aware of statements made by the Pilots, is not recommending a southern turning basin. The Commonwealth states it does not believe a turning basin is necessary. See Appendix A.

After evaluating the Commonwealth's submissions and confirming that re-initiation of consultation with federal agencies was not required,¹⁸ EPA is approving inclusion of the additional dredging work as part of the South Terminal Project provided that all ARARs and conditions contained in the Final Determination, as modified, and this Third Modification are met and maintained. See section VI.B below for more detailed discussion of ARARs.

B. Description of Dredging Work

The Commonwealth's new request includes a reconfiguration of the navigational channel and the tug channel, currently at different depths, into one navigational channel of a uniform depth of -30 to -32 MLLW. By expanding into areas already dredged and eliminating the need for a tug channel, only slightly more dredging is needed to bring the expanded 300 foot wide channel to a uniform depth range of -30 to -32 MLLW and aquatic impacts are minimized. However, there will be 6.5 acres of impacts. Of the total impact of 6.5 acres, 4.2 acres represent a temporary impact as the benthic community is expected to recover. Permanent impact of 2.3 acres is projected, as this quantity of winter flounder spawning habitat will be removed by the dredging. Additional mitigation for the 2.3 acres of permanent impact is required and is described below in section III.D. Dredging operations will be the same as described in the Final Determination. (See discussion in the Final Determination beginning on page 29.)

The additional dredging would extend west by 25 feet the navigational channel area authorized in the Final Determination, beginning at the federal turning basin and moving south to the northern end of the deep draft berthing area. The eastern expansion of 50 feet will occur entirely within the tug channel authorized in the Final Determination, beginning at the federal turning basin and moving south to the southern end of the deep draft berthing area. Approximately 30,000 cubic yards of contaminated sediment and approximately 75,000 cubic yards of clean sediment will be generated by this expansion. Contaminated sediment will be disposed in CAD cell 3; clean dredged material may be used for expanded mitigation activities at the winter flounder mitigation area or may be disposed of at the Rhode Island Sound Disposal Site under an existing permit. See maps at Figures 1 and 3.

The additional 25 foot width channel expansion will occur on the western, or landward, side of the 225 foot channel authorized in the Second Modification in areas that have historically been dredged, either by the U.S. Army Corps of Engineers (west of the

¹⁸See EPA's email to NMFS dated August 14, 2014 and NMFS's response dated August 15, 2014, (ESA consultation) and August 18, 2014 (EFH and FWCA consultations).

Turning Basin) or by the Commonwealth during construction of the boat basin that services the South Terminal facility. The section west of the turning basin is already at a depth of -28 to -30 MLLW; the section in front of the terminal is 20 to -28 MLLW. The eastern expansion of 50 feet wide will occur entirely within the existing tug channel, currently at -14 MLLW (some areas of the tug channel were at depths of -30 MLLW prior to EPA's authorization of the tug channel). This 50 foot wide area will be dredged to a uniform range of -30 to -32 MLLW; the remaining 50 feet of the original tug channel will not be dredged beyond the existing -14 feet MLLW and will become part of the side slope for the expanded channel.¹⁹

Disposal of approximately 30,000 cubic yards of contaminated sediment in CAD cell 3 will be conducted as described in the Final Determination. The Commonwealth, in its July 25, 2014 submission, describes that capacity to accommodate this additional approximately 30,000 cubic yards of material in CAD cell 3 exists due to self-compaction of material placed to date within the CAD and because the volume of the actual amount of previously dredged contaminated material disposed of in the CAD was less than the amount estimated during the design phase of the Project.²⁰

C. Blasting - Background

The July 25, 2014 submission also included a request for additional blasting as a rock removal method associated with the requested expansion. The Commonwealth requested that the blasting be authorized to occur prior to September 1, 2014 for several reasons including the continued presence of blasting equipment in the area, the fact that clean overburden material has not yet been dredged within the proposed blasting areas, and the project construction schedule. In the Second Modification, EPA authorized the use of blasting as a rock removal method in three areas during construction of the terminal bulkhead and channel dredging. That approval was based on, among other things, mitigation measures that would be taken, the results from a JASCO Applied Sciences acoustic model which described peak pressure and impulse impact thresholds for explosive charges up to 150 pounds, and input from state and federal agencies, including the U.S. Army Corps of Engineers regarding impacts to the Hurricane Barrier, from NMFS regarding impacts to the Atlantic sturgeon, an endangered species, as well as other aquatic life, and from the Massachusetts Historical Commission regarding impacts to the Palmer Island Light Station. See EPA's Second Modification.

Given the compressed time period, EPA agreed to review the request for blasting on an accelerated basis provided that the Commonwealth submitted sufficient information for EPA to determine that, without further dredging, the requested blasting activities associated with the expanded channel would not result in greater depth or width in the

¹⁹ See Attachments P-1 of the Commonwealth's July 25, 2014 submission for a cross section of the east and west expansion area side slopes.

²⁰ See pages 10-11 of the Commonwealth's July 25, 2014 submission.

channel beyond that which was already authorized by EPA in its Second Modification. In its August 14, 2014, submission, the Commonwealth provided further information and, based on that information and as explained below, on August 20, 2014, EPA determined that the requested blasting would not alter the currently authorized channel configuration and could proceed within the requested timeframe. See Appendix B.

In its submissions, the Commonwealth described the additional blasting to be conducted in areas located completely within the authorized navigational channel, the tug channel and associated side slopes of those channels. Blasting would occur in two areas along the western side of the navigational channel and in one larger area in the tug channel with several smaller areas located in the southeast corner of the tug channel. The total volume of the rock to be removed was estimated to be approximately 3,000 cubic yards over an area of approximately 27,000 square feet. The maximum charge weight per delay was limited to 136 pounds. Further details of the work is included in the Commonwealth's July 25 and August 14, 2014 submittals. See Figure 2 for a map of the blasting areas.

Because the requested blasting would occur during certain time periods of restricted in-water work established to protect various aquatic resources, EPA coordinated with NMFS prior to issuing its determination. Due to the use of the fish deterrent systems, prior success with blasting (i.e. no large fish mortalities) and the reduced scope of the proposed blasting (smaller area, fewer and smaller charges), NMFS determined that reinitiation of consultation under ESA, EFH and FWCA was not required. In addition, given the shift in two proposed blasting locations closer to the Palmer Island Light Station, EPA requested the Commonwealth to either update or confirm the information and conclusions reached by its contractor for prior blasting events about the anticipated impact of the additional proposed blasting on the Light Station. EPA also required the Commonwealth to provide documentation from the U.S. Army Corps of Engineers that it was aware of the proposed blasting and its determination about potential impacts on the Hurricane Barrier. The Commonwealth provided the requested information (see discussions below in sections VI.B.5 and VI.B.6 of this document).

As a result, EPA issued its August 20, 2014 determination based on a description of the additional blasting work contained in the Commonwealth's July 25, 2014 submission, a review of weekly blasting reports from prior blasting events which showed no significant amount of fish mortality, consideration of supporting material provided by the Commonwealth in its August 14, 2014 submission including calculated anticipated vibration levels at the Palmer Island Light Station that were significantly below the limiting vibration levels for historic structures, and input from other federal agencies. A number of conditions were included in EPA's August 20, 2014 determination, including mitigation measures to protect the surrounding community and aquatic and land-based resources, an approved blasting work plan, and a post-blasting report. See Appendix B

for more complete discussion of EPA's determination with regard to additional blasting. See also footnote 3.

D. Additional Mitigation

Dredging associated with the channel expansion will impact 6.5 acres of subtidal habitat, including 2.3 acres of winter flounder spawning habitat in an area authorized for dredging to a shallower depth in the Final Determination but which will now be dredged to a depth that will destroy this habitat area. The Commonwealth estimates that an additional 128,066 shellfish will be impacted which represents an increase of 1.4% of the total number of shellfish impacted by the South Terminal Project (estimated to be 9,285,300). Mitigation for impacts to winter flounder spawning habitat consists of expanding the winter flounder mitigation area an additional 4.6 acres which will compensate for the additional impacts resulting from the channel expansion. EPA believes that the shellfish mitigation program established under the Final Determination is adequate to compensate for the additional shellfish impacts resulting from the expanded channel dredging. A map of the expanded mitigation area is attached as Figure 3. Additional discussion of mitigation measures may be found in section VI.B.4 (EFH and FWCA) below.

IV. Clarification of Upland Remediation on Radio Tower Parcel and Changed Use

In the Second Modification to the Final Determination, EPA determined that onsite disposal of upland soils and sediment with identified PCB concentrations < 50 ppm in the area depicted on Attachment 6 of the First Modification to the November 19, 2012 TSCA Determination (see Appendix D of Second Modification to Final Determination) would not pose an unreasonable risk of injury to health or the environment provided the conditions in the First Modification to the November 19, 2012 TSCA Determination were met.

Although requested at the time, EPA did not have sufficient information about potential PCB contamination on the Radio Tower parcel to include it in the First Modification of the November 19, 2012 TSCA Determination; however the document provided that the Commonwealth could, in the future, provide information about PCB concentrations and, if > 1 ppm, provide a proposed cleanup plan in accordance with 40 CFR Part 761 to EPA for review and approval.

Subsequent sampling and analysis of the Radio Tower parcel revealed concentrations of PCB contaminated soil \geq 50 ppm located in the northeastern corner of the parcel.²¹ A

²¹ The Commonwealth reports that sampling and analysis for PCBs took place on a 25-foot grid across the parcel. In locations where samples collected on the 25-foot grid indicated concentrations of PCBs above 50 mg/kg (or ppm), additional samples were collected on five-foot intervals surrounding that sampling

map of this location, also referred to as DGA-10, is Attachment 3 to Appendix E of this document. The Commonwealth submitted a final work plan that calls for excavation and offsite disposal of identified ≥ 50 ppm PCB-contaminated soils, site grading, capping the entire site with a three-foot thick Dense Graded Aggregate cap, fencing and an activity and use limitation. During these activities, dust suppression measures will be used as necessary and air monitoring will be conducted to ensure emission levels do not exceed the protective levels set out in the air monitoring performance standards for the project.²²

Because EPA is satisfied, based on the sampling conducted, that the PCB concentrations are representative of site conditions within the DGA-10 area, the identified ≥ 50 ppm PCB-contaminated materials will be excavated and transported offsite for disposal at an appropriately licensed facility without the need for confirmatory sampling following excavation. The lateral extent and depth of excavations are shown on Attachment 4 of Appendix E of this document. The three-foot thick cap of Dense Graded Aggregate cover, used for the main facility parcels which also contain similar concentrations of PCB contamination, will be extended to cover the Radio Tower parcel. The parcel will also be fenced and future land use restrictions will be put in place. Any maintenance requirements for the proposed work shall be incorporated into the long-term monitoring plan for the site. Finally, TSCA decontamination regulations will apply to all work conducted on this parcel. EPA has determined that the proposed activities will not pose an unreasonable risk of injury to health or the environment. A Second Modification to the November 19, 2012 TSCA Determination is attached as Appendix E.

All upland remediation activities will be conducted in compliance with the M.G.L. c. 21E cleanup program as described in the Final Determination.

The Commonwealth has provided a letter from the current parcel owner securing access to conduct required remedial work.²³

The Final Determination identified the Radio Tower parcel's intended use to be as an ancillary parcel needed for storage of equipment to support the offshore wind industry once the Commonwealth obtained ownership. This intended use was due to the anticipated lower load bearing capacity given the anticipated one foot cap of clean material conceptually planned for the parcel. However, the presence of contamination on the parcel and the resulting need to construct a minimum three-foot thick Dense Graded Aggregate cap enables the Commonwealth to transform this parcel into one capable of supporting heavy loads. The Second Modification to the TSCA Determination, Appendix E, acknowledges this changed use and requires that certain

location. Borings were also advanced within the areas where high concentrations of PCBs were identified in order to vertically delineate the contamination. See the final Remedial Work Plan for PCB Remedial Activities and Soil Management Plan, dated September 27, 2014.

²² See Appendix A of EPA's Final Determination for the South Terminal Project.

²³ See attachment to the Commonwealth's submission dated September 25, 2014.

conditions, including minimum capping and long-term monitoring requirements, be met.

V. Post-Final Determination Minor Changes

A. Source Material for Mitigation Measures

A minor change made during the course of construction of the South Terminal Project allowed the substitution of the use of clean parent material dredged from another source in the Harbor as material for mitigation purposes, and this document continues that authorization provided EPA is given prior notice and provides written approval, the material is appropriate for its intended use and meets the objectives of the Final Mitigation Plan, and is appropriate for the proposed use, all permits for offshore disposal are modified as necessary.

In early January 2014, the Commonwealth discovered that the clean parent bottom of dredge material, generated from dredging of the navigational channel and the Gifford Street boat basin, that was to be used for capping the OU3 mitigation area (located just south of the Hurricane Barrier) was too rocky to be effectively hydraulically placed and the shallow water depths in the mitigation area limited other potential placement options. It requested substitution of the clean parent material dredged from the bottom of EPA's lower harbor CAD cell (Phase 1) for use as the capping material and that the clean, rocky material be disposed offshore under an existing permit.

EPA reviewed information provided by the Commonwealth²⁴ as well as relevant data EPA gathered during design and construction completed to date on the lower harbor CAD cell. In late January 2014, EPA authorized the substitution of the source of clean, parent material for mitigation purposes at the OU3 pilot cap area provided that certain conditions were met. EPA's approval with conditions is attached as Appendix C.

Because the use of clean, parent material for mitigation measures was already included in the mitigation measures discussed during consultation with NMFS in the Final Determination, no further consultation was necessary.

This Third Modification also authorizes other substitution of clean, parent material dredged from sources in the Harbor for use in mitigation areas provided that all conditions in this Third Modification are met.

²⁴ See email dated January 10, 2014 from Chet Myers to EPA; email dated January 15, 2014 from EPA to Chet Myers; and the Commonwealth's submission dated January 16, 2014.

B. Single Blasting Event in March 2014

EPA also authorized, during the course of the Project construction, a single additional blasting event, as a minor change.

After completing the blasting program authorized in the Second Modification, in a February 2014 letter to EPA, the Commonwealth represented that subsequent excavation revealed that a small portion of rock remained in an area of the thickest known quantity of rock along the edge of the bulkhead. Mechanical attempts to remove the rock failed, leaving blasting as a last resort.²⁵ Given its construction schedule, the Commonwealth requested that this single blasting event occur during certain time periods of restricted in-water work established to protect various aquatic resources.

The rock to be blasted was described to be approximately 50 feet in length, ranging in width from approximately two to 10 feet, and approximately 16 feet thick at its thickest point, for a total volume of approximately 125 cubic yards. An estimated six to 12 holes would be required, each loaded with approximately 32 pounds per delay.

After conducting its review of information provided by the Commonwealth and coordinating with NMFS,²⁶ EPA determined that the requested blasting event was smaller than the series of blasts that were conducted by the Commonwealth in the same general area over the winter. EPA also reviewed the pre- and post-blasting reports from the larger prior blasting events which included a fish deterrent system, a fisheries observer on site and monitoring and noted there was no significant amount of fish mortality observed as a result of those blasts. The blasting reports also included vibration monitoring results which showed that all readings from the winter blasting events were below the allowable limits for historic, residential and other structures, including the hurricane barrier.²⁷

On the basis of the above findings, and after ensuring with NMFS that re-initiation of consultation was not required, EPA determined that this single blasting event was a minor change to the Project and that the Project continues to meet the substantive requirements of all identified ARARs provided certain conditions were met. A copy of EPA's March 7, 2014 approval with conditions is attached as Appendix D.

²⁵ See letter dated February 28, 2014 from Bill White, MassCEC, to Elaine Stanley, EPA.

²⁶ See series of emails from February 28, 2014 to March 7, 2014.

²⁷ See attachment C to the Commonwealth's August 14, 2014 submission for a compilation of the blasting reports for the winter of 2012-2013. See also attachment C of that submission for the blasting report for the March 2013 blasting event.

VI. CERCLA Statutory Requirements

A. CERCLA § 121 Factors

The Project, as modified, does not conflict with and is not inconsistent with the New Bedford Harbor Superfund remediation, and EPA reaffirms that the 1998 ROD, including the State Enhanced Remedy, remains protective of human health and the environment. The dredging work will sequester an additional 30,000 cubic yards of contaminated sediment that would not otherwise be addressed by the Superfund dredging since it is below Superfund cleanup levels in the lower harbor. This work continues to enhance the 1998 ROD by further reducing the availability of PCB contamination to aquatic life, particularly those that bioaccumulate PCBs, which has led to the Site's risk from consumption of fish. Similarly, the upland remediation work on the Radio Tower parcel continues to address contaminated soil and sediment through TSCA and the state cleanup program that would not otherwise be addressed in the foreseeable future if this Project did not occur. See page 41 of the Final Determination and page 27 of the Second Amendment for more detailed discussion about the protectiveness of the Project. As long as the conditions contained in the Final Determination as modified by the First and Second Modification and this Third Modification are implemented and maintained, the Project will not adversely affect human health or the environment.

Consistent with the Final Determination findings, as modified by the First and Second Modification, the work described in this Third Modification does not change or alter EPA's determinations set out on page 42 of EPA's Final Determination that disposing of the additional dredged contaminated material in CADs will permanently isolate this sediment from human and environmental receptors by containing it in perpetuity using a safe and protective technology, and that CADs, although not using treatment of the PCB-contaminated sediment as a principal element, provide protection against site risks posed by these sediments by removing and permanently isolating the sediment.

The Commonwealth has not provided cost information for this Third Modification work; however, no Superfund money will be used to finance the work.

A detailed discussion of how the work described in this Third Modification complies with ARARs follows below.

B. Significant Substantive Requirements

As stated in the Final Determination, because EPA has integrated the State Enhanced Remedy into the 1998 ROD, this Project, and any modification to it, must comply with §121(d) of CERCLA and §300.450 of the NCP which requires the work to meet the substantive requirements of all ARARs. See page 43 of the Final Determination for a general overview of ARARs.

EPA has re-evaluated the Project as modified by this Third Modification for compliance with ARARs. While no additional federal ARARs were identified, additional analysis and consultations were required pursuant to the ARARs identified in the Final Determination. After completing this analysis and concluding all required consultation, EPA has determined, as set out below, that the Project as modified by this Third Modification complies with all ARARs provided all conditions contained in the Final Determination, as modified by the First and Second Modification and this Third Modification, are met and maintained. The Commonwealth has concluded that the determinations related to the state ARARs identified in Appendix D to the Final Determination do not need to be revised or supplemented to address the Project modifications, and that the potential impacts from this work are already addressed through the state standards described in Appendix D to the Final Determination.²⁸

In addition, there are public safety regulations that are not under the jurisdiction of EPA, which govern the planned activities including Department of Transportation, Coast Guard, and Homeland Security regulations as well as Occupational Safety and Health Administration rules. This Project shall comply with those regulations and shall also comply with Massachusetts Explosive Regulations at 527 CMR 13. The Commonwealth shall ensure its contractors secure all necessary federal, state and local permits required by these regulations.

1. Section 404 of the Clean Water Act (33 U.S.C. §1344)

As discussed in the Final Determination, aquatic impacts associated with the discharge of dredged or fill material into waters of the U.S., including secondary impacts associated with the filling such as dredging and rock removal, are evaluated for compliance with the Clean Water Act § 404(b)(1) guidelines. The additional impacts that would result from the proposed Project modifications do not change EPA's determination that the Project, subject to the conditions in the Final Determination, as modified, and in this Third Modification, complies with the applicable CWA guidelines. The expanded dredging and blasting do not change EPA's determination that the South Terminal site represents the LEDPA, since other alternatives are either not practicable or not less environmentally damaging, nor do they change EPA's conclusions regarding the Project's compliance with the other elements of the CWA guidelines, as discussed below.

1. Expanded Dredging

Expanded Dredging. The expanded dredging will result in a greater areal impact to the soft bottom benthos, but this is considered temporary as the substrate will not change,

²⁸ See email dated August 14, 2014 from Phil Weinberg, MassDEP to Bill White, CEC which is attachment I-1 to the Commonwealth's August 14, 2014 submission.

just the depth. Recovery of the disturbed areas by benthic creatures will start immediately after the construction stops, and the benthic infaunal community will likely be fully recovered within a 3-5 year time period. Winter flounder feed on clams, worms, and other members of this community, so its loss also represents a temporary impact to winter flounder. However, due to the relatively rapid recovery of this community and the relatively small size of the area (compared to the area available for winter flounder foraging), it does not represent a significant impact. Water quality impacts will be monitored to ensure that state water quality standards are not violated, but some level of degradation in the immediate vicinity of the dredge will occur. The expanded dredging will increase the duration of the dredging, but significant water quality impacts are not anticipated from the additional dredging.

The Commonwealth has minimized impacts by confining its request for additional dredging to the minimum channel width and depth considered to provide safe passage for the expected vessels according to the consensus of the maritime experts MassCEC consulted.

The expanded dredging will eliminate an additional 2.3 acres of winter flounder habitat by increasing the depth of substrate beyond that typically utilized by winter flounder for spawning. Even with the expanded dredging, EPA continues to believe that the Project will not cause or contribute to significant degradation of waters of the U.S. In addition, the expanded dredging will not meaningfully increase impacts on water quality and associated effects from elevated turbidity on fish and benthic species, because it will be subject to the same water quality performance standards as the previously approved dredging. Those standards are set forth in Appendix C of the Second Modification to the Final Determination. Finally, the Commonwealth has agreed to provide additional mitigation to address the additional impacts to winter flounder habitat, consistent with the CWA guidelines. Specifically, the Commonwealth will expand the winter flounder mitigation area by 4.6 acres (a 2:1 acreage ratio of mitigation to impact area).

2. Blasting

EPA evaluated the potential environmental impacts associated with the proposed additional blasting program based on information presented in the Commonwealth's request for additional blasting, dated July 25, 2014, and supplemental information submitted on August 14, 2014; EPA's analysis and the conclusions reached in the Second Modification of the Final Determination; and the results of the previous blasting program. The previous blasting program did not result in substantial adverse environmental impacts. The proposed additional blasting would occur in the same general area as the previous blasting program and would utilize the same mitigative measures to minimize impacts as the previous blasting program (clean overburden left in place; pre- and post-blast fish monitoring; fish deterrence, including a startle system, silt curtains, and bubble curtains to deter fish and reduce pressure and impulse impacts). In addition, the maximum charge weight for the proposed blasting program

would be smaller, and the duration of blasting would be shorter, further minimizing likely impacts below those of the previous blasting program. For these reasons, EPA concluded that the proposed additional blasting program would not result in significant adverse environmental impacts, and authorized the additional blasting program in our letter dated August 20, 2014, subject to the conditions specified in that letter. (Appendix B, and described above.)

3. Winter Flounder Mitigation

As compensatory mitigation for the additional impacts to the aquatic ecosystem resulting from the expanded channel dredging, the Commonwealth will expand the winter flounder spawning habitat mitigation area by 4.6 acres. The Commonwealth will place clean material in areas that are currently deeper than what winter flounder prefer for spawning. The addition of material will elevate the bottom resulting in depths that winter flounder will preferably utilize for spawning.

The expanded dredging will result in a greater areal impact to the soft bottom benthos, but this is considered temporary as the substrate will not change, just the depth. Recovery of the disturbed areas by benthic creatures will start immediately after the construction stops, and the benthic infaunal community will likely be fully recovered within a 3-5 year time period. The expanded dredging will have temporary impacts on the benthic infaunal community. Winter flounder feed on clams, worms and other members of this community, so its loss also represents a temporary impact to winter flounder. However, due to the relatively rapid recovery of this community and the relatively small size of the area (compared to the area available for winter flounder foraging), it does not represent a significant impact.

2. Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403) Public Interest Review; Navigation and Navigable Waters (33 U.S.C. §408)

For the reasons discussed above, the proposed changes for additional dredging and blasting do not alter EPA's evaluations in the Final Determination and Second Modification of the Beneficial and Detrimental Impacts to the Environment and the Public Interest under § 10 of the Rivers and Harbors Act of 1899.

Therefore, there is no change in EPA's conclusion in the Final Determination and the Second Modification that, after weighing the positive and negative impacts associated with this Project, EPA has determined that the South Terminal Project is not contrary to the overall public interest.

3. Endangered Species Act (16 U.S.C. §1531 et seq.)

For the Second Modification, EPA reinitiated consultation with NMFS on the potential effects of the requested expanded dredging and blasting on the Atlantic sturgeon. During consultation, EPA described the potential impacts from expanded dredging and blasting and EPA's conclusion that while these activities may affect the Atlantic sturgeon, they were unlikely to adversely affect the species either on its own or when combined with the other impacts associated with this Project, due in large part to the limited presence of the sturgeon in the area and the mitigative measures that will be employed. NMFS concurred with EPA's determination that the Project, including the additional dredging and rock blasting, is not likely to adversely affect the Atlantic sturgeon provided that the specified mitigative measures to minimize the potential for entrainment and turbidity, and to minimize acoustic impacts and maintain a zone of passage, are employed. See Appendix B and Section VII.B.1 of the Second Modification for mitigation measures.

In response to the Commonwealth's third modification request, EPA again contacted NMFS on August 14, 2014 about the potential adverse impacts to Atlantic sturgeon from the additional blasting and expanded dredging. Based on the Commonwealth's continued use of the fish deterrent system, its successful (i.e. no large fish mortalities) blasting previously in this system, a reduced blasting scope and the limited presence of Atlantic sturgeon in this system, EPA concluded that potential effects from this modification would not require re-initiation of consultation under ESA. On August 15, 2014, NMFS agreed that re-initiation was not required.

4. Essential Fish Habitat Assessment under the Magnuson-Stevens Act (16 U.S.C. §§ 1851 et seq.) and Fish and Wildlife Coordination Act (16 U.S.C. §661-677e)

EPA reinitiated consultation with NMFS under the Magnuson-Stevens Fishery Conservation and Management Act and the FWCA on the potential effects of the additional dredging and blasting on EFH and on fish and wildlife resources protected by FWCA for the Second Modification. EPA concluded that the additional dredging would not result in additional adverse effects on EFH or resources protected by FWCA, since it would not cause any additional loss of winter flounder spawning habitat, and it would be subject to the same water quality performance standards as the previously approved dredging. EPA also concluded that with time of year restrictions on blasting consistent with NMFS's recommendations, and with additional conditions requiring implementation of a fish deterrent system, the potential for fish to be within the impact area would be minimized to the greatest extent possible. Further, EPA identified conditions it intended to impose on the maximum charge weight per delay and the minimum delay time between charges to ensure no adverse pressure and impulse effects on fish.

In response to the Commonwealth's third modification request, EPA contacted NMFS on August 14, 2014 to discuss potential adverse impacts to EFH and species covered under the FWCA. EPA reviewed the potential impacts from the additional blasting and expanded dredging and the proposed mitigation and concluded that the Commonwealth had reasonably minimized impacts to EFH and FWCA resources. On August 18, 2014, NMFS agreed that impacts to EFH had been reasonably minimized and no further consultation was required, provided that there was additional compensatory mitigation for the additional loss of winter flounder spawning habitat.

5. National Historic Preservation Act (16 U.S.C. § 470, 36 CFR Part 800)

The Project modifications do not alter EPA's determination, set forth in Appendix G of EPA's Final Determination, that the Project will not affect historic properties.

The expanded dredging areas included in this Third Modification will be conducted within areas that the Commonwealth represents have already been evaluated in archeological surveys performed as part of this Project, or are in areas that have been dredged as part of the SER or South Terminal Project work.

EPA has reviewed the archeological investigations in relation to the proposed additional dredging and the previously identified paleosols area. (See Figure 4 for map of areas of archeological survey.) The paleosols are located between the former Gifford Street boat ramp and the southern edge of the newly constructed terminal facility. (See Figure 5 for a mapped location of the paleosols area.) The expanded dredge area, although expanding laterally both east and west of the already authorized navigational channel, does not extend any further south than previously authorized dredging areas. The southern end of the 25 foot western lateral expansion stops north of the existing Shuster property; the southern end of the eastern lateral expansion stops approximately halfway along the edge of the newly constructed terminal. Neither expansion area is closer to the paleosol area than previously authorized dredging. See Figure 1.

PCB-remediation activities and other site related cleanup work will be conducted on the Radio Tower parcel which is located significantly north of the former dwellings in the former Acushnet Mills company housing area, previously identified as an area of archeological interest. (See Attachment 1 of Appendix G to the FD.) Prior to issuing its August 20, 2014 approval of the blasting portion of the Commonwealth's request,²⁹ EPA reviewed the vibrations recorded in the blasting reports from prior blasting events, all of which were below the allowable limits for historic, residential and other structures (including the Palmer Island Light Station and the hurricane barrier). EPA also reviewed an updated technical memorandum from the Commonwealth's contractor, GZA, regarding anticipated impacts of the additional proposed blasting on the Light Station.

²⁹ See Appendix B to this Third Modification.

GZA calculated the anticipated vibration levels would be significantly below the limiting vibration of <0.5 in/sec.³⁰

Also, because the Light Station is owned and maintained by the City of New Bedford, EPA requested and the Commonwealth provided a letter dated August 11, 2014 from the New Bedford Harbor Development Commission ("HDC") expressing its satisfaction with the precautions instituted to protect the Light Station.³¹

After considering the calculations performed by the Commonwealth's consultant, the Commonwealth's July 25 and August 14, 2014 submissions to EPA in support of this modification, and in light of the actions that have been taken and would continue to be taken in accordance with the conditions set out in EPA's September 16, 2013 letter to Brona Simon, State Historic Preservation Officer ("the SHPO") and EPA's August 20, 2014 letter, EPA determined in its August 20, 2014 letter that the proposed blasting would not change its conclusion set out in EPA's Second Modification for the South Terminal Project that this Project will not affect the Palmer Island Light Station.

The SHPO was copied on EPA's August 20, 2014 determination that approval of the proposed additional blasting would have no effect on the Palmer Island Light Station.

6. Navigation and Navigable Waters, 33 U.S.C. § 408

With regard potential impacts on the New Bedford/Fairhaven Hurricane Barrier, the Commonwealth provided two emails from the U.S. Army Corps of Engineers ("the USACE") which reflect that the USACE had no objection to the additional blasting work provided the work was done following the same protocols established in its previous 33 U.S.C. § 408 approval letter. See page 4 and footnote 7 of EPA's August 20, 2014 letter, Appendix B of this document.

7. Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) PCB Remediation Waste (40 CFR §761.61(c))

Inclusion of additional blasting in the Project does not require a modification of past TSCA Determinations since all contaminated sediment will be removed prior to blasting activities. However, because additional dredging and disposal of PCB- contaminated sediment and removal of additional upland soil is included in this Third Modification to the Final Determination, EPA had to re-evaluate its determination made in the TSCA Determination included as Appendix J(1) in the Final Determination and the First Modified TSCA Determination included as Appendix D to the Second Modification of the Final Determination. After reviewing the Commonwealth's submissions, EPA has

³⁰ The blasting reports from the winter of 2012 – 2013 and March 2013 are Attachments C and D of the Commonwealth's August 14, 2014, submission. The GZA technical memorandum dated August 13, 2014 is Attachment G of that same submission.

³¹ See Attachment H of the Commonwealth's August 14, 2014 submission.

determined that, provided the conditions in the Second Modified TSCA Determination (Appendix E of this document) are met, the work described in this Third Modification will not pose an unreasonable risk of injury to health and the environment.

Dredging and disposal into CAD cell 3 of approximately 30,000 cubic yards of PCB-contaminated sediment generated during the deepening and widening of the navigational channel will be conducted as described in the Final Determination. The Water Quality Performance Standards remain the same (see Appendix C of the Second Modification to the Final Determination). There is no proposed change to the capping of CAD cell 3; the Commonwealth has indicated that inclusion of this additional sediment into CAD cell 3 would not require further expansion of the CAD because the additional capacity would be generated by self-compression of the sediment within the CAD cell, and because the volume of the actual amount of previously dredged contaminated material disposed of in the CAD was less than the amount estimated during the design phase of the Project. A map showing the expansion areas to be dredged is attached as Figure 1 to this Second Modification to the Final Determination.

With respect to the remediation of PCB-contaminated soils at the Radio Tower parcel and the changed use to heavy loading, PCB-contaminated soils with ≥ 50 ppm will be excavated with offsite disposal and the parcel will be capped with a minimum three-foot thick Dense Graded Aggregate cover. Finally, the parcel will be fenced and land use restricted. These proposed activities are consistent with the activities that were approved for the main terminal facility under the November 19, 2012, TSCA Determination and the First Modified TSCA Determination.

EPA has reviewed the Commonwealth's submissions regarding the proposed work and has determined that disposal of the identified additional < 50 ppm PCB-contaminated sediments into CAD cell #3 and onsite disposal of upland soils with PCB concentrations < 50 ppm will not pose an unreasonable risk of injury to health or the environment provided the conditions in the Second Modified TSCA Determination (Appendix E to this document) are met.

8. Section 402 of the Clean Water Act (33 U.S.C. §1342)

The Project modifications will not result in additional impacts on stormwater. Therefore, EPA's previous conclusion under Section 402 of the Clean Water Act is unchanged.

9. Section 176(C) Of The Clean Air Act General Conformity Rule Review (42 U.S.C. § 7506(c), 40 CFR Part 93, Subpart B) 42 U.S.C. § 7412, 40 CFR Parts 61 and 63 (NESHAPs)

The Project modifications will not result in additional effects on air quality. Therefore EPA's previous conclusion under the Clean Air Act General Conformity Rule that a conformity determination is not required for EPA's authorization of this Project, is

unchanged.

EPA's conclusion under Parts 61 and 63 is also unchanged.

c. Executive Orders and Policies

- 1. Consultation and Coordination with Indian Tribal Governments
Executive Order (E.O. 13175)
EPA Policy for the Administration of Environmental Programs on Indian
Reservations (1984)
EPA Policy on Consultation and Coordination with Indian Tribes (May 4,
2011)***

Additional dredging and blasting were within the scope of potential impacts included in EPA's consultation with the Tribes before the Final Determination was issued.

The Tribes were copied on EPA's August 20, 2014 letter to the SHPO regarding its conclusion that blasting would not impact the Palmer Island Light Station.

- 2. Federal Actions to Address Environmental Justice in Minority
Populations and Low-Income Populations, (E.O. 12898)***

The Project modifications may result in a small amount of additional traffic during remediation of the Radio Tower parcel. Air monitoring will be conducted continuously during the work and any additional noise impacts are expected to be minimal. The community may have experienced some vibrations during blasting. Vessels were required to avoid the area when blasting events occurred. Appropriate notice and protection measures for the community, for vessels and for structures were in place prior to any blasting activities pursuant to the Commonwealth's Operational Blasting Plan. Because previously authorized dredging is ongoing and the additional dredging has not caused a change to the construction schedule, any community impacts are expected to be insignificant. Therefore, EPA's conclusion, that the Project is not expected to have disproportionately high and adverse human health or environmental effects on low-income or minority populations, as set forth in Appendix M of EPA's Final Determination, is unchanged.

- 3. Floodplain Management Executive Order (E.O. 11988)***

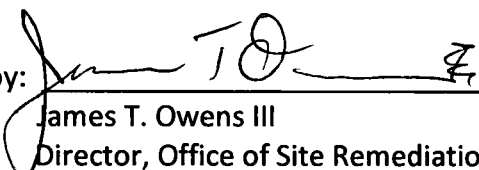
The Project modifications will not result in additional effects on the floodplain. Therefore EPA's analysis under the Floodplain Management Executive Order set forth in Appendix L of EPA's Final Determination is unchanged.

4. Wetland Executive Order (E.O. 11990)

The Project modifications will not result in additional effects on wetlands. Therefore EPA's analysis under the Wetlands Executive Order set forth in Appendix J of EPA's Final Determination is unchanged.

5. Invasive Species Executive Order (E.O. 13112)

The Project modifications will not result in additional effects related to invasive species. Therefore EPA's analysis under the Invasive Species Executive Order set forth in Appendix N of EPA's Final Determination is unchanged.

Issued by:  _____
James T. Owens III
Director, Office of Site Remediation and Restoration

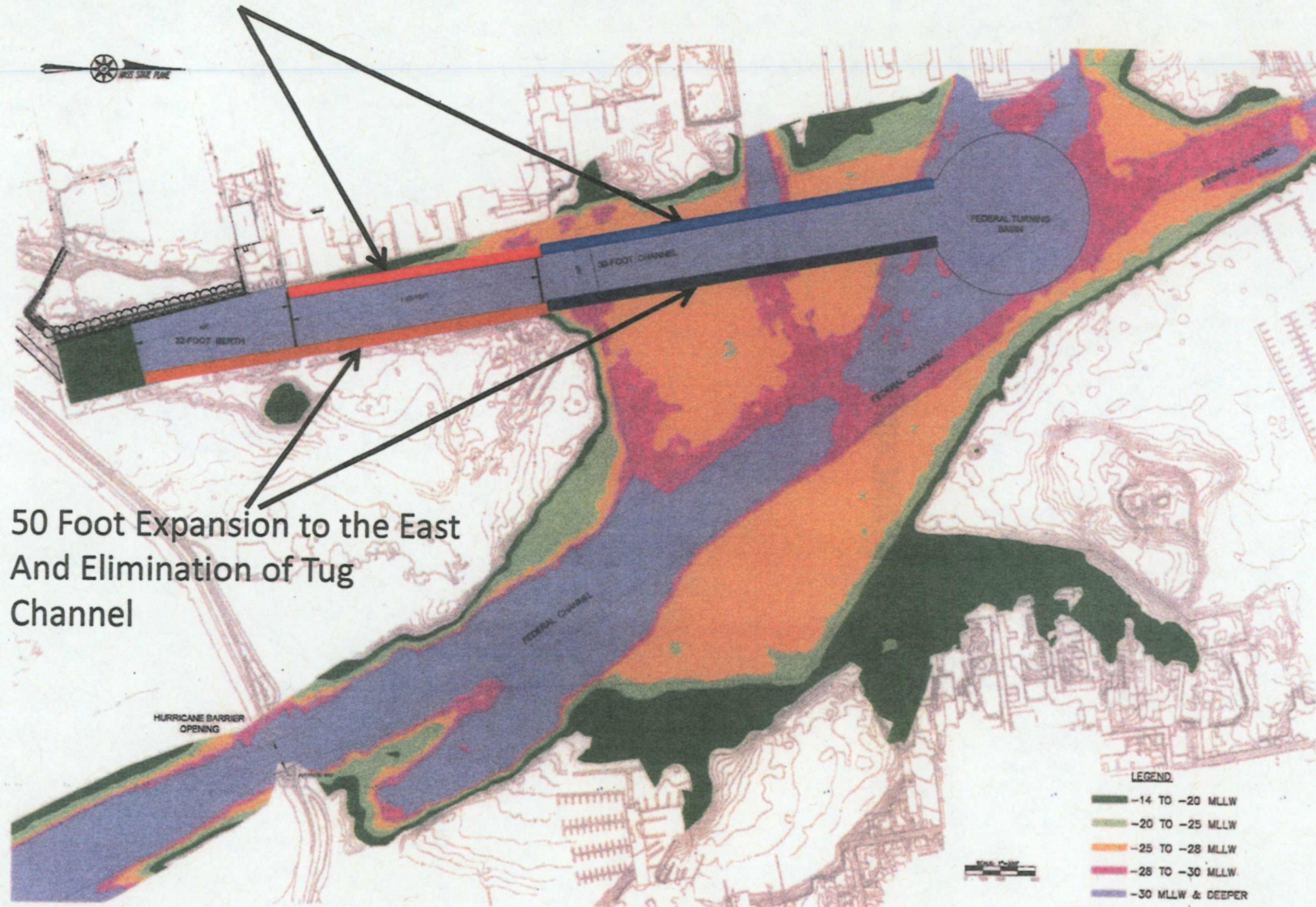
Date: 9/30/14

**Third Modification to EPA's Final Determination for the South Terminal Project
New Bedford State Enhanced Remedy**

Figure 1

Map of 300' Reconfigured Navigation and Tug Channels

25 Foot Expansion to the West



**Third Modification to EPA's Final Determination for the South Terminal Project
New Bedford State Enhanced Remedy**

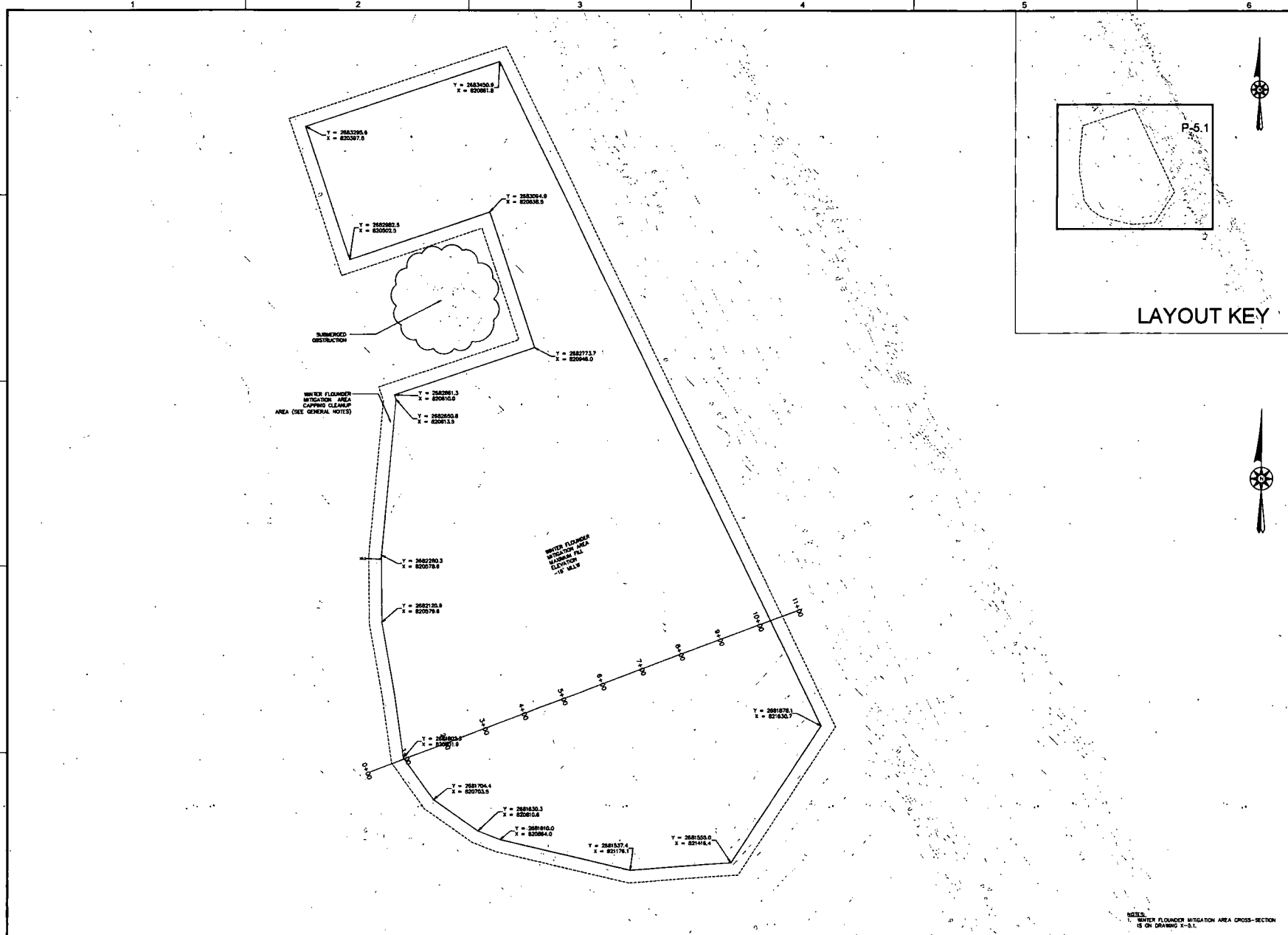
Figure 2

Map of Additional Blast Areas

**Third Modification to EPA's Final Determination for the South Terminal Project
New Bedford State Enhanced Remedy**

Figure 3

Map of Additional Winter Flounder Mitigation Areas



APEX
 ROCKVILLE, MD
 SOUTH WINDSOR, CT - BOSTON, MA -
 NEW BEDFORD, MA - HOLYOKE, MA
 125 BROAD STREET, FIFTH FLOOR
 BOSTON, MA 02110
 1213 PURCHASE STREET
 NEW BEDFORD, MA 02740

NO DIMENSIONS SHOWN IN ANY FIGURE SHALL BE CONSIDERED AS SUCH UNLESS SPECIFICALLY NOTED OTHERWISE. ALL DIMENSIONS SHALL BE TO THE CENTER OF THE LINE UNLESS OTHERWISE SPECIFIED. ALL DIMENSIONS SHALL BE TO THE CENTER OF THE LINE UNLESS OTHERWISE SPECIFIED. ALL DIMENSIONS SHALL BE TO THE CENTER OF THE LINE UNLESS OTHERWISE SPECIFIED.

DRAFT

PROJECT
 NEW BEDFORD
 MARINE COMMERCE
 TERMINAL

OWNER
 MASSACHUSETTS CLEAN ENERGY CENTER
 63 FRANKLIN STREET, 3RD FLOOR
 BOSTON, MA

NO.	DATE	DESCRIPTION	BY
3	7/21/14	AREA EXPANDED	MJT
2	8/19/13	AREA UPDATED	CHM
1	12/23/11	FOR CONSTRUCTION	CHM

PROJECT NO.	8880
CADD FILE	MIT_OUT_FLNDR
DESIGNED BY	GCD
DRAWN BY	MJT
CHECKED BY	GCD
DATE	7-24-2014
DRAWING SCALE	1"=100'

GRAPHIC SCALE
 SCALE: 1"=100'
 0 50 100 200

SHEET TITLE
 WINTER FLOUNDER
 MITIGATION
 AREA
 PLAN

DRAWING NO.
 P-5.1A

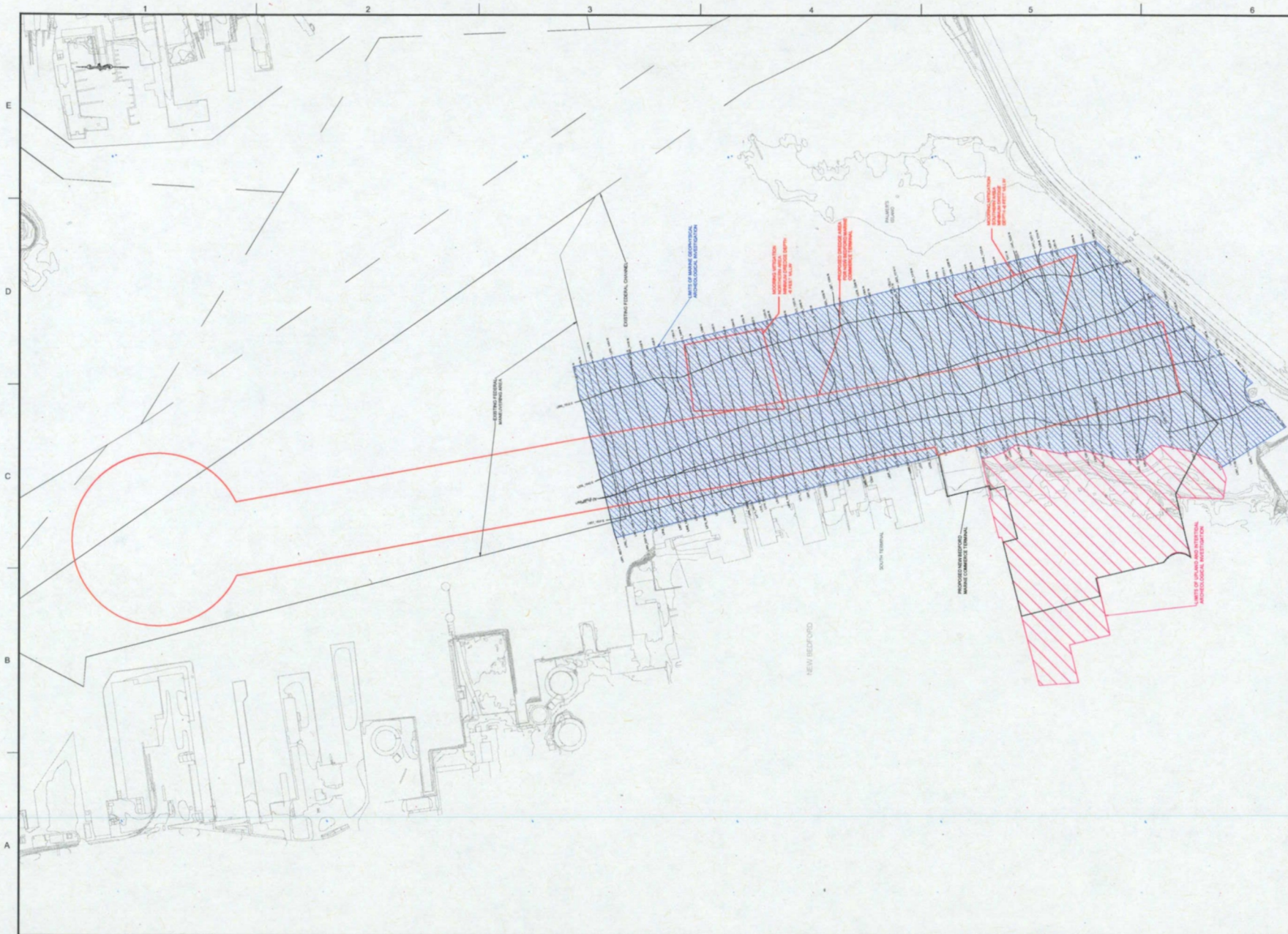
88 OF 97

NOTES:
 1. WINTER FLOUNDER MITIGATION AREA CROSS-SECTION IS ON DRAWING P-5.1.

**Third Modification to EPA's Final Determination for the South Terminal Project
New Bedford State Enhanced Remedy**

Figure 4

Map of Archeological Survey Areas

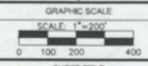


ROCKVILLE, MD
SOUTH WINDSOR, CT - BOSTON, MA -
NEW BEDFORD, MA - HOLYOKE, MA
151 HIGH STREET, SUITE 502
BOSTON, MA 02215
55H CONNECTICUT AVENUE
SOUTH WINDSOR, CT

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PROJECT	
NEW BEDFORD MARINE COMMERCE TERMINAL	
OWNER	
55 SUMMER STREET, 9TH FLOOR BOSTON, MASSACHUSETTS	

1.	7/21/2014	300' CHANNEL	GCD
NO.	DATE	DESCRIPTION	BY
PROJECT NO.		6880	
CADD FILE		HET_NTPRESS2012.dwg	
DESIGNED BY		JER	
DRAWN BY		JER	
CHECKED BY			
DATE		06/08/2012	
DRAWING SCALE		1"=200'	



SHEET TITLE	
LIMITS OF GEOPHYSICAL AND ARCHEOLOGICAL EXPLORATION 300' CHANNEL	
DRAWING NO.	
1 OF 1	

**Third Modification to EPA's Final Determination for the South Terminal Project
New Bedford State Enhanced Remedy**

Figure 5

Map of Paleosol Area

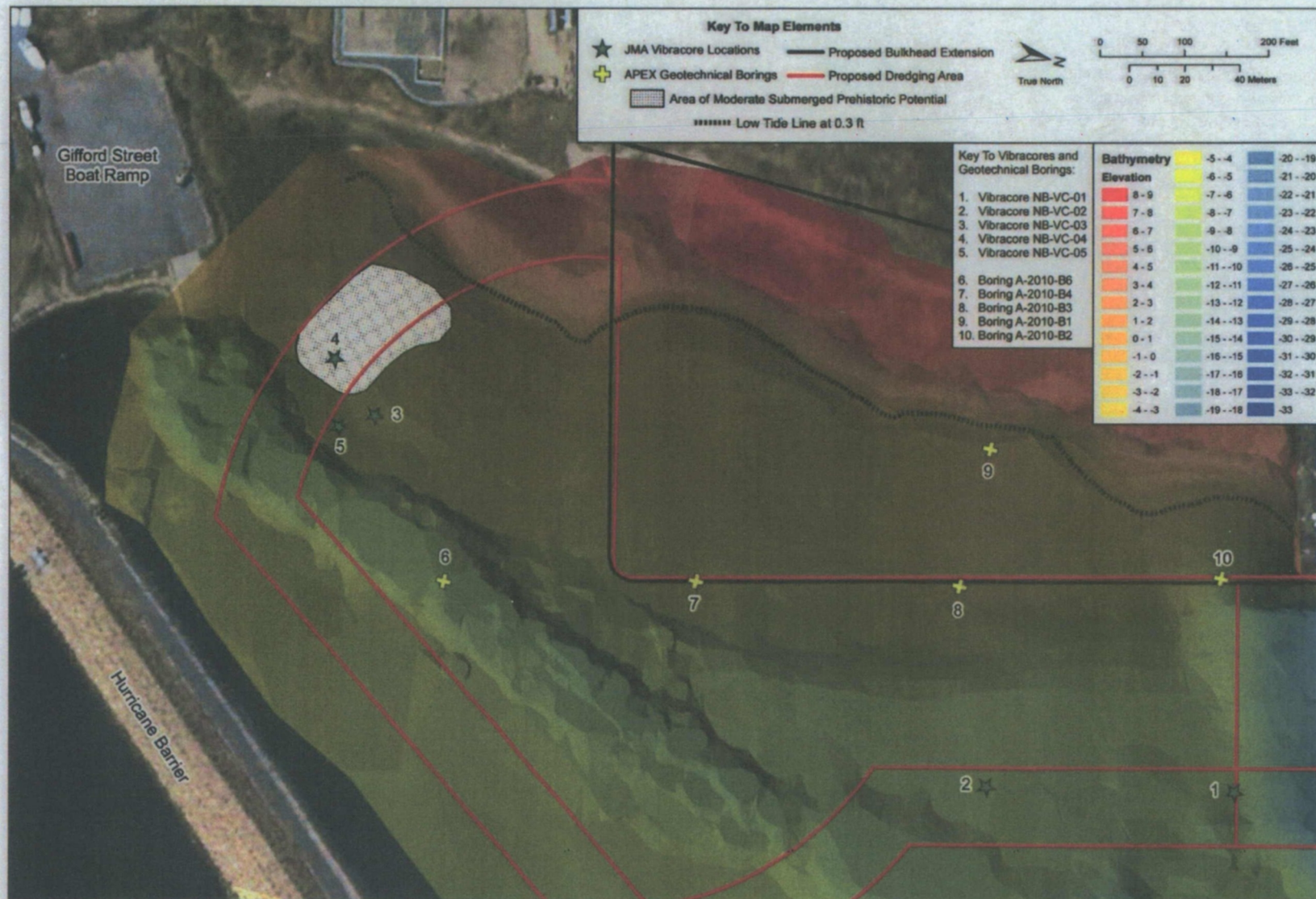


Figure 10. Map of South Terminal Marine Infrastructure Park Project Areas, Depicting Vibracore and Geotechnical Boring Locations, and the Subtidal Area Identified as Exhibiting Moderate Archeological Potential.

Schena, Cristeen

From: Sandy Taylor <sandyt@saveoursound.org>
Sent: Tuesday, September 30, 2014 4:17 PM
To: McDonnell, Ida
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Ida:
Another week has flown by and I am checking in to see if Cape Wind has filed any application for any changes since last week?
Thank you very much.
Sandy

Sandy Taylor
Executive Assistant
4 Barnstable Road
Hyannis, MA 02601
508-775-9767
508-775-9725 (f)
sandyt@saveoursound.org
www.saveoursound.org

From: Sandy Taylor [mailto:sandyt@saveoursound.org]
Sent: Monday, September 22, 2014 3:00 PM
To: 'McDonnell, Ida'
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Ida:
Thank you very much.
Sandy

Sandy Taylor
Executive Assistant
4 Barnstable Road
Hyannis, MA 02601
508-775-9767
508-775-9725 (f)
sandyt@saveoursound.org
www.saveoursound.org

From: McDonnell, Ida [mailto:McDonnell.Ida@epa.gov]
Sent: Monday, September 22, 2014 2:56 PM
To: Sandy Taylor
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Hi Sandy,

No they have not.

Ida E. McDonnell, Manager
Air Permits, Toxics and Indoor Programs Unit
EPA-New England, Region 1

5 Post Office Square
Boston, MA 02109-3912
Phone 617-918-1653
Fax 617-918-0653

From: Sandy Taylor [<mailto:sandyt@saveoursound.org>]
Sent: Monday, September 22, 2014 1:23 PM
To: McDonnell, Ida
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Ida:
I am just checking in to see if Cape wind has submitted any application for a change of staging?
Thanks,
Sandy

Sandy Taylor
Executive Assistant
4 Barnstable Road
Hyannis, MA 02601
508-775-9767
508-775-9725 (f)
sandyt@saveoursound.org
www.saveoursound.org

From: McDonnell, Ida [<mailto:McDonnell.Ida@epa.gov>]
Sent: Tuesday, September 16, 2014 8:42 AM
To: Sandy Taylor
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Sandy,

We have not received any notice of staging area changes from the applicants.

Feel free to keep checking in.

Ida E. McDonnell, Manager
Air Permits, Toxics and Indoor Programs Unit
EPA-New England, Region 1
5 Post Office Square
Boston, MA 02109-3912
Phone 617-918-1653
Fax 617-918-0653

From: Sandy Taylor [<mailto:sandyt@saveoursound.org>]
Sent: Monday, September 15, 2014 2:49 PM
To: McDonnell, Ida
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Ida:

Thank you calling a couple of weeks ago regarding our letter to the EPA about the New Bedford staging location change that we have been hearing about for four years.

Now that there has been an official announcement on this location change, has the EPA received any notice of project change from Cape Wind regarding the move to new Bedford as reported in the press? If so, could you provide a copy of the application/notice?

This is a link to the Cape Cod Times where this quote appeared:

<http://m.capecodonline.com/apps/pbcs.dll/article?AID=/20140911/NEWS11/140919911&template=wapart>

“Cape Wind will file paperwork with the federal government early next week to modify its Construction and Operations Plan with the Bureau of Ocean Energy Management in order to deploy the wind project from New Bedford, company officials said.”

Thank you again for your assistance.

Sandy

Sandy Taylor
Executive Assistant
4 Barnstable Road
Hyannis, MA 02601
508-775-9767
508-775-9725 (f)
sandyt@saveoursound.org
www.saveoursound.org

From: McDonnell, Ida [<mailto:McDonnell.Ida@epa.gov>]
Sent: Tuesday, August 26, 2014 10:29 AM
To: Sandy Taylor
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Sandy,

You sent me an e-mail on August 19, 2014 asking if “... if any permit has been issued and if there are any documents/correspondence with Cape Wind or with any parties outside of EPA on this permit renewal are available for you to send to us?”

At this time, EPA is not issuing any additional permits to Cape Wind (CWA). As you know, CWA has requested EPA to extend the Phase I Construction end date for the current Outer Continental Shelf Air Permit issued to Cape Wind Associates, LLC (CWA) dated January 7, 2011. CWA has asked us to extend the end date from September 30, 2015 to September 30, 2017. EPA is currently reviewing this request and is evaluating whether CWA has met the conditions for such a change as specified in Section XI of the permit.

Section XI of the permit also contains a requirement regarding ESA. I am enclosing several letters recently sent regarding the status of the project’s compliance with ESA. In particular, I have included a copy of EPA’s letter to the Bureau of Ocean Energy Management where, based on the facts, EPA has determined that reinitiating the consultation requirements under ESA is unnecessary.

I will send you our determination once EPA has completed its review of CWA’s extension request.

Sincerely,

Ida E. McDonnell, Manager
Air Permits, Toxics and Indoor Programs Unit
EPA-New England, Region 1
5 Post Office Square
Boston, MA 02109-3912
Phone 617-918-1653
Fax 617-918-0653

From: Sandy Taylor [<mailto:sandyt@saveoursound.org>]
Sent: Tuesday, August 19, 2014 10:20 AM
To: McDonnell, Ida
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Ida:
Thank you for your response to our questions, sorry for the delay getting back to you.

We would like to inquire if any permit has been issued and if there are any documents/correspondence with Cape Wind or with any parties outside of EPA on this permit renewal are available for you to send to us?

Again, thank you for response.
Sandy

Sandy Taylor
Executive Assistant
4 Barnstable Road
Hyannis, MA 02601
508-775-9767
508-775-9725 (f)
sandyt@saveoursound.org
www.saveoursound.org

From: McDonnell, Ida [<mailto:McDonnell.Ida@epa.gov>]
Sent: Wednesday, August 13, 2014 1:31 PM
To: Sandy Taylor
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Hi Sandy,

I have the following responses to your questions below:

1. What is the status of EPA's review of Cape Wind's extension request?

EPA is currently reviewing the Cape Wind Associates request made on March 7, 2014 to extend the end date of the Phase I construction period from September 30, 2015 to September 30, 2017

2. What is the status on of Cape Wind request, timeline and process?

EPA will either grant or deny, via a letter, the request to increase the Phase I construction period in accordance with Conditions XI.A.1-4 of the Outer Continental Shelf Air Permit OCS-R1-01. At this time we have not established a firm response date to Cape Wind Associates request. With the recent resolution of the outstanding issues involving consultation under the Endangered Species Act, my staff will now focus on reviewing all other pertinent information regarding extending the end date for the Phase I construction period. I have attached to this e-mail our letter dated August 12, 2014 to the Bureau of Ocean Energy Management. Once we have come to a decision, our response letter regarding the extension request will be signed by the Regional Administrator.

3. Will the public have an opportunity to comment?

Granting or denying the extension of the Phase I construction period does not require modifying the permit. If the permit was required to be modified, EPA would need to follow the process for modifying the permit contained in 40 CFR parts 55 and 124. At this time EPA is not planning to conduct a formal public comment period concerning the extension request.

4. EPA to provide a copy of their decision when made.

EPA will send our decision letter regarding the Phase I construction end date extension to Save Our Sound and other interested parties.

5. Will you be responding to our comment letter?

We are currently evaluating the comments made in your April 1, 2014 and will respond to you once we complete our evaluation.

Please feel free to call me if you have any further questions.

Ida E. McDonnell, Manager
Air Permits, Toxics and Indoor Programs Unit
EPA-New England, Region 1
5 Post Office Square
Boston, MA 02109-3912
Phone 617-918-1653
Fax 617-918-0653

From: Sandy Taylor [<mailto:sandyt@saveoursound.org>]

Sent: Friday, August 08, 2014 2:14 PM

To: McDonnell, Ida

Subject: Follow up on 5/22/14 Cape with Audra Parker

Ida:

I am following up your call with Audra Parker regarding Cape Wind's CA permit on 5/22/14.

There were several questions that you were going to get back to us on after reviewing them with Jill Metcalf.

- What is the status of EPA's review of Cape Wind's **EXTENSION** request?
- What is the status on of Cape Wind request, timeline and process?
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- Will you be responding to our comment letter (see attached)?

Thank you very much,
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Schena, Cristeen

From: McDonnell, Ida
Sent: Monday, September 29, 2014 11:26 AM
To: McCoy, Angel
Cc: Dahl, Donald
Subject: RE: Cape Wind

Hi Angel,

Nice talking to you this morning. I failed to mention another question we have on ESA is whether or not an extension of the construction period, (since construction should have commenced by now) would require a reopening of the ESA determination?

I cc'd Donald Dahl of my staff so you can respond to both of us when you have an answer or you can contact him if my question is unclear. He can be reached at 617-918-1657.

Thanks so much

Ida E. McDonnell, Manager
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Boston, MA 02109-3912
Phone 617-918-1653
Fax 617-918-0653

From: McCoy, Angel [mailto:angel.mccoy@boem.gov]
Sent: Friday, September 26, 2014 11:40 AM
To: Morin, Michelle
Cc: McDonnell, Ida; Dahl, Donald
Subject: Re: Cape Wind

Hello Ida,

My calendar is open on Monday so we can talk at anytime.

Angel

On Fri, Sep 26, 2014 at 6:59 AM, Morin, Michelle <michelle.morin@boem.gov> wrote:

Hello Ida,

Thanks for the email. Angel McCoy, our meteorologist who I have cc'd, will call on Monday. She can fill you in on what we have received from Cape Wind. Angel's number is 703-787-1758.

Thanks,
Michelle Morin
Chief, Environment Branch for Renewable Energy
U.S. Department of the Interior

Bureau of Ocean Energy Management
381 Elden Street, HM 1328
Herndon, Virginia 20170
Office (703) 787-1722
Blackberry (571) 488-4434
Fax (703) 787-1708
michelle.morin@boem.gov

On Thu, Sep 25, 2014 at 3:49 PM, McDonnell, Ida <McDonnell.Ida@epa.gov> wrote:

Hi Michelle,

Jill Lewandowski told me that you are now the contact for Cape Wind. I would like to discuss their contract with New Bedford, MA as a possible staging area along with a permit extension that we are working on for them. I will be on vacation after Monday so if we could touch base on Monday, I would really appreciate it. Please let me know if you are available. If not, Donald Dahl of my staff can discuss the permit extension with you in my absence.

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Fax 617-918-0653

--

Angel M. McCoy

Meteorologist, Environmental Branch

Office of Renewable Energy Programs

Bureau of Ocean Energy Management

703-787-1758

Angel.McCoy@boem.gov

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Angel M. McCoy

Meteorologist, Environmental Branch

Office of Renewable Energy Programs

Bureau of Ocean Energy Management

703-787-1758

Angel.McCoy@boem.gov

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Sent: Friday, September 26, 2014 6:59 AM
To: McDonnell, Ida
Cc: Dahl, Donald; McCoy, Angel M
Subject: Re: Cape Wind

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Ida E. McDonnell, Manager

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Phone 617-918-1653

Fax 617-918-0653

Schena, Cristeen

From: Dahl, Donald
Sent: Thursday, September 25, 2014 4:42 PM
To: Metcalf, Jill
Subject: FW: Cape Wind

FYI since you asked yesterday

Donald Dahl
Air Permits
EPA New England
(617) 918-1657

From: McDonnell, Ida
Sent: Thursday, September 25, 2014 3:50 PM
To: michelle.morin@boem.gov
Cc: Dahl, Donald
Subject: Cape Wind

Hi Michelle,

Jill Lewandowski told me that you are now the contact for Cape Wind. I would like to discuss their contract with New Bedford, MA as a possible staging area along with a permit extension that we are working on for them. I will be on vacation after Monday so if we could touch base on Monday, I would really appreciate it. Please let me know if you are available. If not, Donald Dahl of my staff can discuss the permit extension with you in my absence.

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Schena, Cristeen

From: McDonnell, Ida
Sent: Thursday, September 25, 2014 3:50 PM
To: michelle.morin@boem.gov
Cc: Dahl, Donald
Subject: Cape Wind

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Schena, Cristeen

From: Jill Lewandowski <jill.lewandowski@boem.gov>
Sent: Thursday, September 25, 2014 2:50 PM
To: McDonnell, Ida
Subject: Re: Cape Wind

Ida,

Great to hear from you. It has been some time.

I no longer working on Cape Wind. I have cc'ed Michelle Morin who runs the environmental program for our Renewable Energy office. I suggest contacting Michelle or she can respond if there is someone more specific to speak with.

Jill

On Sep 25, 2014, at 2:00 PM, "McDonnell, Ida" <McDonnell.Ida@epa.gov> wrote:

Hi Jill,

Are you still the contact person at BOEM for issues surrounding Cape Wind. I would like to discuss their contract with New Bedford, MA as a possible staging area along with a permit extension that I am working on for them.

Thanks

Ida E. McDonnell, Manager
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Schena, Cristeen

From: Sandy Taylor <sandyt@saveoursound.org>
Sent: Monday, September 22, 2014 3:00 PM
To: McDonnell, Ida
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Ida:
Thank you very much.
Sandy

Sandy Taylor
Executive Assistant
4 Barnstable Road
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From: McDonnell, Ida [mailto:McDonnell.Ida@epa.gov]
Sent: Monday, September 22, 2014 2:56 PM
To: Sandy Taylor
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Hi Sandy,

No they have not.

Ida E. McDonnell, Manager
Air Permits, Toxics and Indoor Programs Unit
EPA-New England, Region 1
5 Post Office Square
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From: Sandy Taylor [<mailto:sandyt@saveoursound.org>]
Sent: Monday, September 22, 2014 1:23 PM
To: McDonnell, Ida
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Ida:
I am just checking in to see if Cape wind has submitted any application for a change of staging?
Thanks,
Sandy

Sandy Taylor
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From: McDonnell, Ida [<mailto:McDonnell.Ida@epa.gov>]
Sent: Tuesday, September 16, 2014 8:42 AM
To: Sandy Taylor
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Sandy,

We have not received any notice of staging area changes from the applicants.

Feel free to keep checking in.

Ida E. McDonnell, Manager
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Ida:

Thank you calling a couple of weeks ago regarding our letter to the EPA about the New Bedford staging location change that we have been hearing about for four years.

Now that there has been an official announcement on this location change, has the EPA received any notice of project change from Cape Wind regarding the move to new Bedford as reported in the press? If so, could you provide a copy of the application/notice?

This is a link to the Cape Cod Times where this quote appeared:

<http://m.capecodonline.com/apps/pbcs.dll/article?AID=/20140911/NEWS11/140919911&template=wapart>

“Cape Wind will file paperwork with the federal government early next week to modify its Construction and Operations Plan with the Bureau of Ocean Energy Management in order to deploy the wind project from New Bedford, company officials said.”

Thank you again for your assistance.
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From: McDonnell, Ida [<mailto:McDonnell.Ida@epa.gov>]
Sent: Tuesday, August 26, 2014 10:29 AM
To: Sandy Taylor
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Sandy,

You sent me an e-mail on August 19, 2014 asking if "... if any permit has been issued and if there are any documents/correspondence with Cape Wind or with any parties outside of EPA on this permit renewal are available for you to send to us?"

At this time, EPA is not issuing any additional permits to Cape Wind (CWA). As you know, CWA has requested EPA to extend the Phase I Construction end date for the current Outer Continental Shelf Air Permit issued to Cape Wind Associates, LLC (CWA) dated January 7, 2011. CWA has asked us to extend the end date from September 30, 2015 to September 30, 2017. EPA is currently reviewing this request and is evaluating whether CWA has met the conditions for such a change as specified in Section XI of the permit.

Section XI of the permit also contains a requirement regarding ESA. I am enclosing several letters recently sent regarding the status of the project's compliance with ESA. In particular, I have included a copy of EPA's letter to the Bureau of Ocean Energy Management where, based on the facts, EPA has determined that reinitiating the consultation requirements under ESA is unnecessary.

I will send you our determination once EPA has completed its review of CWA's extension request.

Sincerely,

Ida E. McDonnell, Manager
Air Permits, Toxics and Indoor Programs Unit
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5 Post Office Square
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Phone 617-918-1653
Fax 617-918-0653

From: Sandy Taylor [<mailto:sandyt@saveoursound.org>]
Sent: Tuesday, August 19, 2014 10:20 AM
To: McDonnell, Ida
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Ida:

Thank you for your response to our questions, sorry for the delay getting back to you.

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3. Will the public have an opportunity to comment?

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4. EPA to provide a copy of their decision when made.

EPA will send our decision letter regarding the Phase I construction end date extension to Save Our Sound and other interested parties.

5. Will you be responding to our comment letter?

We are currently evaluating the comments made in your April 1, 2014 and will respond to you once we complete our evaluation.

Please feel free to call me if you have any further questions.

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- What is the status on of Cape Wind request, timeline and process?
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Sent: Friday, August 08, 2014 2:14 PM

To: McDonnell, Ida

Subject: Follow up on 5/22/14 Cape with Audra Parker

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- EPA to provide a copy of their decision when made.
- Will you be responding to our comment letter (see attached)?

Thank you very much,
Sandy

Sandy Taylor
Executive Assistant
4 Barnstable Road
Hyannis, MA 02601
508-775-9767
508-775-9725 (f)
sandyt@saveoursound.org
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Schena, Cristeen

From: Sandy Taylor <sandyt@saveoursound.org>
Sent: Monday, September 22, 2014 1:23 PM
To: McDonnell, Ida
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Ida:
I am just checking in to see if Cape wind has submitted any application for a change of staging?
Thanks,
Sandy

Sandy Taylor
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sandyt@saveoursound.org
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From: McDonnell, Ida [mailto:McDonnell.Ida@epa.gov]
Sent: Tuesday, September 16, 2014 8:42 AM
To: Sandy Taylor
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Sandy,

We have not received any notice of staging area changes from the applicants.

Feel free to keep checking in.

Ida E. McDonnell, Manager
Air Permits, Toxics and Indoor Programs Unit
EPA-New England, Region 1
5 Post Office Square
Boston, MA 02109-3912
Phone 617-918-1653
Fax 617-918-0653

From: Sandy Taylor [mailto:sandyt@saveoursound.org]
Sent: Monday, September 15, 2014 2:49 PM
To: McDonnell, Ida
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Ida:

Thank you calling a couple of weeks ago regarding our letter to the EPA about the New Bedford staging location change that we have been hearing about for four years.

Now that there has been an official announcement on this location change, has the EPA received any notice of project change from Cape Wind regarding the move to new Bedford as reported in the press? If so, could you provide a copy of the application/notice?

This is a link to the Cape Cod Times where this quote appeared:

<http://m.capecodonline.com/apps/pbcs.dll/article?AID=/20140911/NEWS11/140919911&template=wapart>

"Cape Wind will file paperwork with the federal government early next week to modify its Construction and Operations Plan with the Bureau of Ocean Energy Management in order to deploy the wind project from New Bedford, company officials said."

Thank you again for your assistance.

Sandy

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sandyt@saveoursound.org
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From: McDonnell, Ida [<mailto:McDonnell.Ida@epa.gov>]
Sent: Tuesday, August 26, 2014 10:29 AM
To: Sandy Taylor
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Sandy,

You sent me an e-mail on August 19, 2014 asking if "... if any permit has been issued and if there are any documents/correspondence with Cape Wind or with any parties outside of EPA on this permit renewal are available for you to send to us?"

At this time, EPA is not issuing any additional permits to Cape Wind (CWA). As you know, CWA has requested EPA to extend the Phase I Construction end date for the current Outer Continental Shelf Air Permit issued to Cape Wind Associates, LLC (CWA) dated January 7, 2011. CWA has asked us to extend the end date from September 30, 2015 to September 30, 2017. EPA is currently reviewing this request and is evaluating whether CWA has met the conditions for such a change as specified in Section XI of the permit.

Section XI of the permit also contains a requirement regarding ESA. I am enclosing several letters recently sent regarding the status of the project's compliance with ESA. In particular, I have included a copy of EPA's letter to the Bureau of Ocean Energy Management where, based on the facts, EPA has determined that reinitiating the consultation requirements under ESA is unnecessary.

I will send you our determination once EPA has completed its review of CWA's extension request.

Sincerely,

Ida E. McDonnell, Manager
Air Permits, Toxics and Indoor Programs Unit
EPA-New England, Region 1
5 Post Office Square
Boston, MA 02109-3912
Phone 617-918-1653
Fax 617-918-0653

From: Sandy Taylor [<mailto:sandyt@saveoursound.org>]
Sent: Tuesday, August 19, 2014 10:20 AM
To: McDonnell, Ida
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Ida:
Thank you for your response to our questions, sorry for the delay getting back to you.

We would like to inquire if any permit has been issued and if there are any documents/correspondence with Cape Wind or with any parties outside of EPA on this permit renewal are available for you to send to us?

Again, thank you for response.
Sandy

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From: McDonnell, Ida [<mailto:McDonnell.Ida@epa.gov>]
Sent: Wednesday, August 13, 2014 1:31 PM
To: Sandy Taylor
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Hi Sandy,

I have the following responses to your questions below:

1. What is the status of EPA's review of Cape Wind's extension request?

EPA is currently reviewing the Cape Wind Associates request made on March 7, 2014 to extend the end date of the Phase I construction period from September 30, 2015 to September 30, 2017

2. What is the status on of Cape Wind request, timeline and process?

EPA will either grant or deny, via a letter, the request to increase the Phase I construction period in accordance with Conditions XI.A.1-4 of the Outer Continental Shelf Air Permit OCS-R1-01. At this time we have not established a firm response date to Cape Wind Associates request. With the recent resolution of the outstanding issues involving consultation under the Endangered Species Act, my staff will now focus on reviewing all other pertinent information regarding extending the end date for the Phase I construction period. I have attached to this

e-mail our letter dated August 12, 2014 to the Bureau of Ocean Energy Management. Once we have come to a decision, our response letter regarding the extension request will be signed by the Regional Administrator.

3. Will the public have an opportunity to comment?

Granting or denying the extension of the Phase I construction period does not require modifying the permit. If the permit was required to be modified, EPA would need to follow the process for modifying the permit contained in 40 CFR parts 55 and 124. At this time EPA is not planning to conduct a formal public comment period concerning the extension request.

4. EPA to provide a copy of their decision when made.

EPA will send our decision letter regarding the Phase I construction end date extension to Save Our Sound and other interested parties.

5. Will you be responding to our comment letter?

We are currently evaluating the comments made in your April 1, 2014 and will respond to you once we complete our evaluation.

Please feel free to call me if you have any further questions.

Ida E. McDonnell, Manager
Air Permits, Toxics and Indoor Programs Unit
EPA-New England, Region 1
5 Post Office Square
Boston, MA 02109-3912
Phone 617-918-1653
Fax 617-918-0653

From: Sandy Taylor [<mailto:sandyt@saveoursound.org>]

Sent: Friday, August 08, 2014 2:14 PM

To: McDonnell, Ida

Subject: Follow up on 5/22/14 Cape with Audra Parker

Ida:

I am following up your call with Audra Parker regarding Cape Wind's CA permit on 5/22/14.

There were several questions that you were going to get back to us on after reviewing them with Jill Metcalf.

- What is the status of EPA's review of Cape Wind's **EXTENSION** request?
- What is the status on of Cape Wind request, timeline and process?
- Will the public have an opportunity to comment?
- EPA to provide a copy of their decision when made.
- Will you be responding to our comment letter (see attached)?

Thank you very much,
Sandy

Sandy Taylor
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